

# **TRANSCRIPT OF RECORD**

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1941**

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**No. 855**

**THE UNITED STATES OF AMERICA, APPELLANT**

**vs.**

**THE UNIVIS LENS COMPANY, INC., THE UNIVIS COR-  
PORATION, JACK R. SILVERMAN, MYER H. STAN-  
LEY, G. F. STANLEY, N. M. STANLEY**

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**No. 856**

**THE UNIVIS LENS COMPANY, INC., THE UNIVIS COR-  
PORATION, JACK R. SILVERMAN, MYER H. STAN-  
LEY, G. F. STANLEY, N. M. STANLEY, APPELLANTS**

**vs.**

**THE UNITED STATES OF AMERICA**

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**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**FILED JANUARY 9, 1942**



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1 In District Court of the United States, Southern  
District of New York

Civil No. 10-392

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS COMPANY, INC.; THE UNIVIS CORPORATION; JACK  
R. SILVERMAN; MYER H. STANLEY; G. F. STANLEY; N. M. STAN-  
LEY, DEFENDANTS.

*Præcipe for transcript of record*

Filed Dec. 11, 1941

TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz:

1. Bill of complaint.
2. Defendants' Motion to Vacate and Quash Service of Summons and Dismiss Action, and attached Affidavits In Support of Motion to Vacate Service of Summons and to Dismiss Action by Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley.
3. Notice of Motion to Vacate and Quash Service of Summons and Dismiss Action.
4. Affidavits In Opposition to Motion to Vacate Service of Summons and To Dismiss Action by Walter Conrad, Jacob  
2 Lampert, Aaron Klein, John R. Keenan, Max Zadek, Joe Goodstein, Harry Seulowitz, Walter E. Lehmann, Irma Levin, Samuel Yeager, Maurice Friedlander, Rose Weiss, and Jack R. Silverman.
5. Memorandum opinion of Honorable Alfred C. Coxe, United States District Judge, Southern District of New York, denying defendants' motion to quash the service of summons.
6. Notice of Settlement and Order Denying Motion to Vacate and to Quash Service.
7. Defendants' answer to Bill of Complaint and Exhibit B attached to answer. Exhibit A is omitted because later reproduced as defendants' Exhibit M.
8. Official record of the stenographic minutes, containing a transcript of evidence and proceedings, before the Honorable Clarence G. Galston, United States District Judge, Southern District of New York, on June 5, 6, and 9, 1941.

9. The following exhibits: (a) Plaintiff's exhibits 2 to 4, inclusive, and 6 to 51, inclusive. (b) Defendants' exhibits A to N, inclusive.

10. Opinion of Honorable Clarence G. Galston, United States District Judge, Southern District of New York, dated September 17, 1941.

11. Findings of Fact and Conclusions of Law, filed November 25, 1941.

12. Final Decree of the District Court, dated November 25, 1941.

13. Petition for Appeal.

14. Assignment of Errors and Prayer for Reversal.

15. Notice of Appeal.

16. Order Allowing Appeal.

17. Praecipe for transcript of the record.

18. Notice of serving appeal papers.

19. Order Approving Transmittal of Original Exhibits.

20. Citation.

21. Statement of jurisdiction.

(S) THURMAN ARNOLD,  
Thurman Arnold,  
*Assistant Attorney General.*

(S) SAMUEL S. ISSEKS,  
Samuel S. Isseks,  
*Special Assistant to the Attorney General.*

(S) JAMES C. WILSON,  
James C. Wilson,  
*Special Assistant to the Attorney General.*

Dated this 11th day of December 1941.

(Served Dec. 11, 1941.)

6 In District Court of the United States for the  
Southern District of New York

Civil Action No. 10-392

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS COMPANY, INC.; THE UNIVIS CORPORATION; JACK  
R. SILVERMAN; MYER H. STANLEY; G. F. STANLEY; N. M.  
STANLEY; DEFENDANTS

*Complaint*

(Filed Sept. 16, 1940)

The United States of America, seeking equitable relief by its  
attorney, Samuel S. Isseks, Special Assistant to the Attorney Gen-

eral, acting under the direction of the Attorney General, complains and alleges on information and belief as follows:

#### JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," said act being commonly known as the Sherman Antitrust Act, against the above named defendants in order to prevent violations by them jointly and severally, as hereinafter alleged, of Sections 1 and 3 of said Sherman Antitrust Act.

2. The alleged unlawful acts and violations hereinafter described, including the contracts, combinations and conspiracy to restrain trade and commerce among the several States of the United States and between the several States and the District of Columbia, and in the District of Columbia, have been and are carried out in part and made effective within the Southern District of New York, and many of the said unlawful acts done in pursuance thereof have been performed and are being performed by the defendants within said District. The Univis Lens Company, Inc., has manufactured and now manufactures bifocal lenses pursuant to said unlawful combination and conspiracy at its factory located outside the Southern District of New York and the defendants named herein have sold, shipped and delivered and now sell, ship, and deliver, certain of these bifocal lenses in interstate trade and commerce to customers living within the Southern District of New York, and in the several States of the United States; and the defendants named herein have solicited business and orders for the purchase of said bifocal lenses within said District; and defendant, The Univis Corporation, in carrying out said unlawful combination and conspiracy, have licensed certain wholesalers and retailers within the Southern District of New York to deal in, handle and sell such bifocal lenses; and the defendants named herein have issued and distributed price lists quoting prices that resulted from such combination and conspiracy for the resale of such bifocal lenses within said District. The majority of said wholesalers, including all such wholesalers located within the Southern District of New York, sell, ship, and deliver certain of said bifocal lenses in interstate trade and commerce at prices and under terms agreed on in said combination and conspiracy.

## DESCRIPTION OF DEFENDANTS

3. The defendant The Univis Lens Company, Inc. (sometimes hereinafter referred to as Univis Lens Company), is a corporation organized under and existing by virtue of the laws of the State of Ohio, having its principal place of business at 46 Cannon Street, Dayton, Ohio. Said defendant owns a majority of the stock and controls the activities of The Univis Corporation, hereinafter named a defendant. Defendant Univis Lens Company manufactures bifocal lenses which incorporate certain features covered by claims of patents controlled by The Univis Corporation. Univis Lens Company sells, ships, and delivers such bifocal lenses in interstate trade and commerce to customers located in the several States of the United States and in the District of Columbia.

4. The defendant The Univis Corporation (sometimes hereinafter referred to as Univis Corporation) is a corporation organized under and existing by virtue of the laws of the State of Delaware, having an office and place of business at 46 Cannon Street, Dayton, Ohio, in the same offices and building as Univis Lens Company. Defendant Univis Corporation owns or controls certain patents, under the claims of which it licenses wholesalers and retailers in the several States of the United States and in the Southern District of New York and in the District of Columbia to handle, deal in, and sell bifocal lenses manufactured by defendant Univis Lens Company.

5. The following individual defendants are associated with defendants Univis Lens Company and Univis Corporation, and each has held and now holds the official title and position with each respective corporation as shown below. Said individual defendants have participated and now participate in the direction and management of said defendant corporations, and said individual defendants have approved, authorized, ordered, or done the acts of said corporate defendants constituting the offenses hereafter charged in this complaint.

Name of individual defendant	Address	Position Univis Lens Company	Position Univis Corporation
Jack R. Silverman	Dayton, Ohio	President	Vice President
Myer H. Stanley	Dayton, Ohio	Secretary	President
George F. Stanley	Dayton, Ohio	Vice President	Secretary and Treasurer
N. M. Stanley	Dayton, Ohio	Chairman, Board of Directors	Chairman of Board of Directors

## DEFINITIONS AND DESCRIPTION OF SUBJECT MATTER

6. The term "lens," wherever used in this complaint, means a lens manufactured of glass to give normal vision to the user thereof, as in all types of spectacles and eyeglasses, but shall not mean a lens employed to give abnormal vision to the user, as in telescopes, binoculars, and microscopes.

7. The term "finish," wherever used in this complaint, refers to grinding, or finishing a bifocal lens according to the prescription of the individual customer.

8. The term "bifocal," wherever used in this complaint, refers to a lens equipped with two distinct segments. As a usual thing, the larger or "distance" segment is ground to counteract deficiencies in the wearer's distant vision, and the smaller or "reading" segment, at the bottom of the larger segment, is ground to counteract deficiencies in the wearer's reading vision.

9. The term "Univis bifocal," or "Univis lens," wherever used in this complaint, refers to a type of bifocal lens incorporating features claimed by certain patents controlled by defendant Univis Corporation, which bifocals are distributed by defendant Univis Lens Company. Said Univis patents include, among others, the following which shall hereinafter be referred to as the Univis patents:

U. S. Letters Patent No. RE 19,142.

U. S. Letters Patent No. 1,632,208.

U. S. Letters Patent No. 1,729,654.

U. S. Letters Patent No. 1,822,606.

U. S. Letters Patent No. 1,845,940.

U. S. Letters Patent No. 1,868,863.

U. S. Letters Patent No. 1,876,497.

U. S. Letters Patent No. 1,879,769.

U. S. Letters Patent No. 1,886,649.

U. S. Letters Patent No. 1,899,777.

U. S. Letters Patent No. 1,906,672.

U. S. Letters Patent No. 1,912,165.

U. S. Letters Patent No. 1,924,336.

U. S. Letters Patent No. 1,932,100.

U. S. Letters Patent No. 1,949,698.

U. S. Letters Patent No. 1,949,699.

U. S. Letters Patent No. 1,958,729.

U. S. Letters Patent No. 1,971,394.

U. S. Letters Patent No. 1,981,815.

U. S. Letters Patent No. 1,996,442.

U. S. Letters Patent No. 2,025,892.

U. S. Letters Patent No. 2,025,893.



- 11 U. S. Letters Patent No. 2,032,796.  
U. S. Letters Patent No. 2,033,573.  
U. S. Letters Patent No. 2,053,551.

#### BACKGROUND OF CONSPIRACY

10. On or about September 19, 1919, Stanley Optical Company was organized under the laws of the State of Ohio. On or about February 4, 1927, the name of this company was changed to "The Univis Lens Company, Inc.," named a defendant herein.

11. At some time prior to March 14, 1931, defendants Univis Lens Company and individual defendants Myer H. Stanley, George F. Stanley and others, acquired both patents and applications for patents whose claims related to the construction and design of certain bifocal lenses, hereinafter referred to as Univis bifocal lenses. Thereafter, on or about March 14, 1931, such defendants organized Univis Corporation to aid in controlling the prices, sales policies, and distribution of Univis bifocal lenses, by means of licenses granted to wholesalers and retailers based on such patents.

12. Defendant Univis Lens Company and the individual defendants named herein, assigned said patents and applications for patents to defendant Univis Corporation. From time to time thereafter, defendant Univis Corporation acquired other patents whose claims bore upon the construction of Univis bifocal lenses.

13. On or about September 25, 1935, the defendants herein organized a subsidiary corporation, The Univis Products Manufacturing Company, under the laws of the State of Ohio. Until on or about May 31, 1940, when said company was dissolved,

12 The Univis Products Manufacturing Company manufactured the Univis bifocal lenses which defendant Univis Lens Company distributed. Since May 31, 1940, defendant Univis Lens, itself, has manufactured and distributed Univis bifocal lenses.

14. Whenever it is hereinafter stated that defendant Univis Lens Company manufactured Univis bifocal lenses, during the period from on or about September 25, 1935, to on or about May 31, 1940, it will be understood that Univis Lens Company manufactured said lenses through the intermediary of its owned and controlled subsidiary, The Univis Products Manufacturing Company, Inc.

#### OFFENSES CHARGED

15. The defendants have violated and are now violating Sections 1 and 3 of the Sherman Antitrust Act by unlawfully contracting, combining, and conspiring to restrain interstate trade



and commerce in bifocal lenses among the several States of the United States, and between the States and the District of Columbia, and in the District of Columbia and, more particularly, by contracting, combining, and conspiring.

(a) To designate, and select, according to certain arbitrary rules and regulations, wholesalers and retailers to handle and deal in bifocal lenses manufactured by defendant Univis Lens Company.

(b) To sell such bifocal lenses only to such designated and selected wholesalers and retailers.

(c) To restrain such wholesalers and retailers from selling to other wholesalers and retailers not so selected; and

13 (d) To fix uniform, arbitrary, and unreasonable prices at which such wholesalers and retailers could resell such bifocal lenses.

Such contracts, combination, and conspiracy to restrain interstate trade and commerce in bifocal lenses is hereinafter set forth.

16. On or about March 14, 1931, in connection with the organization of defendant Univis Corporation, the defendants herein conspired and combined to use the patents owned or controlled or later acquired by such defendants as the basis for a licensing scheme by which the defendants would have complete control of all phases of the marketing of Univis bifocal lenses, including the selection and designation of wholesalers and retailers of Univis bifocal lenses and the fixing and maintenance of minimum resale prices of such lenses.

17. Under this plan, defendant Univis Corporation issued three types of licenses:

(1) Licenses to wholesalers.

(2) Licenses to retailers with facilities for finishing rough or semi-finished bifocal lenses; and

(3) Prescription licenses to retailers with no finishing equipment.

18. Wholesaler licensees of Univis bifocal lenses are licensed to finish Univis bifocal lenses and to sell them to retailers having finishing or prescription licenses. Wholesalers are specifically prevented from selling unfinished Univis bifocal lenses to unlicensed persons. The wholesaler license also provides that the wholesaler, in reselling Univis bifocal lenses, is required to observe minimum prices fixed by defendants for such resale of Univis bifocal lenses.

14 19. A retailer having a "finishing" license is permitted to purchase Univis lenses in rough form from licensed Univis wholesalers or from defendant Univis Lens Company (or other Univis manufacturing licensees). The finishing licensees are permitted to resell Univis bifocal lenses only to the purchas-

ing public and, in this connection, the finishing licensee must observe the minimum prices fixed by defendants for such resale.

20. The retailer having a "prescription" license agrees to sell Univis bifocal lenses only to the purchasing public and at minimum prices fixed by the defendants. A prescription licensee must first be recommended by an approved Univis wholesaler.

21. Since on or about March 14, 1931, the defendants have carried out this licensing scheme and have issued licenses of the type set forth in paragraphs 18, 19, and 20 hereof, on the terms and conditions indicated therein, and such licenses have been in force and effect from that time until the present time, with the result that the defendants have maintained and are now maintaining complete control of the distribution, including the retail distribution by retailers of Univis bifocal lenses.

22. The defendants have maintained and are now maintaining complete control of the marketing of Univis bifocal lenses through its licensing system, and defendants particularly have maintained and are now maintaining the minimum resale prices to the purchasing public of Univis bifocal lenses, notwithstanding that the defendants have no direct commercial dealings with most of the finishing licensees and prescription licensees.

15 23. Pursuant to the combination and conspiracy, defendants have, since March 14, 1931 and up to the present time, refused to issue licenses to wholesalers and retailers who are price cutters or otherwise are engaged in business practices of a nature disapproved by the defendants.

24. Pursuant to the combination and conspiracy, defendants have, since March 14, 1931 and up to the present time, revoked licenses issued to wholesalers and retailers when the defendants have learned or suspected that a licensee was engaged in price cutting or in business practices of a nature disapproved by said defendants.

25. Licensees of Univis Corporation sell Univis rough lens blanks and finished Univis bifocal lenses only to other licensees of Univis Corporation, or to consumers. Other wholesalers and retailers of ophthalmic goods, who are not licensees of Univis Corporation, cannot buy Univis rough lens blanks and finished Univis bifocal lenses.

26. The various licensees of Univis Corporation maintain and have maintained the prices and terms of sale established by Univis Corporation, with the result that fixed and rigid prices for Univis bifocal lenses have been and now are being maintained. Specifically a pair of Univis lenses of certain foci, purchased by a wholesaler licensee in rough form at a price of \$3.25, must be resold, when finished by the wholesaler, to a licensed retailer at no less

than \$6.00, and the licensed retailer must resell the pair of Univis bifocal lenses to the purchasing public at no less than \$16.00.

16 27. As a result of the combination and conspiracy hereinbefore set out, the defendants have controlled the sales prices, distribution, and marketing of Univis bifocal lenses throughout the United States, and wholesalers and retailers have either been forced to observe the arbitrary rules, regulations, and prices prescribed by said defendants, or have been denied altogether the right to handle, deal in, and sell Univis bifocal lenses. Consumers have been limited in the number of places where they can obtain Univis bifocal lenses, and service on such lenses, and have been compelled to pay arbitrary, artificial, unreasonable and non-competitive prices for such lenses. The majority of licensed Univis wholesalers and licensed Univis retailers, including all such wholesalers and retailers located in the Southern District of New York, purchase Univis bifocal lenses that move in interstate trade and commerce, and the majority of such wholesalers and retailers, including all of such wholesalers and many such retailers located in the Southern District of New York, resell Univis bifocal lenses in interstate trade and commerce.

#### CONCLUSION

28. By establishing and maintaining the contracts, conspiracy, and combination in restraint of trade and by the various acts hereinbefore alleged, the defendants herein (a) have completely controlled the marketing of Univis bifocal lenses; (b) have arbitrarily designated and selected wholesalers and retailers of such lenses; (c) have fixed and maintained arbitrary, artificial, non-competitive, and rigid prices of Univis bifocal lenses, including  
17 the fixing of minimum resale prices of such Univis bifocal lenses; (d) have discouraged and impeded the progress of science and the useful arts and have used the patent laws of the United States for purposes not consistent with the constitutional basis for those laws; and (e) have unreasonably restrained trade and commerce in bifocal lenses in violation of the laws of the United States.

#### PRAYER FOR RELIEF

Wherefore, Plaintiff prays:

(1) That the aforesaid contracts, combinations and conspiracies in restraint of interstate trade and commerce among the several States of the United States, and between the several States and the District of Columbia, and in the District of Columbia, be adjudged and decreed to be unlawful and that the agree-

ments, understandings, and practices alleged in this complaint be adjudged and decreed to be in violation of the Sherman Anti-trust Act.

(2) That the Court adjudge and decree that the defendants have contracted, combined, and conspired to restrain interstate trade and commerce among the several States of the United States, and between the several States and the District of Columbia, and in the District of Columbia, in violation of Sections 1 and 3 of the Sherman Antitrust Act.

(3) That the Court order and adjudge any and all agreements and licenses between The Univis Lens Company, Inc. and The Univis Corporation, with respect to the distribution of Univis bifocal lenses, to represent an illegal combination and conspiracy in restraint of interstate trade and commerce among the several

States of the United States, and between the several States and the District of Columbia, and in the District of Columbia, and that the Court perpetually enjoin said defendants, the officers and directors thereof, and the individual defendants from observing in any respect any such agreements with respect to the distribution of Univis bifocal lenses, and from entering into and executing similar agreements in the future.

(4) That the Court order and adjudge the licensing system and the license agreements of the corporate defendants named herein with wholesalers and retailers to represent an illegal combination and conspiracy in restraint of interstate trade and commerce among the several States of the United States, and between the several States and the District of Columbia, and in the District of Columbia, and that the Court perpetually enjoin the corporate defendants named herein, their officers and directors, and the individual defendants from observing in any respect the licensing agreements between the Univis Corporation and wholesalers and retailers and from forcing such wholesalers and retailers to observe such license agreements, the rules, regulations, and price lists issued thereunder, and from entering into and executing similar agreements in the future.

(5) That the plaintiff have such further, general and different relief as the nature of the case may require and the Court may deem proper in the premises.

(6) That the plaintiff recover the costs of this suit.

(7) That pursuant to Section 5 of the Sherman Antitrust Act, writs of subpoena issue directed to such of the defendants as are not otherwise subject to service within the District, commanding them and each of them to appear herein and to



19 answer each allegation contained in this complaint and to abide by and perform such acts, orders and decrees as the Court may make in the premises.

UNITED STATES OF AMERICA,  
SAMUEL S. ISSEKS,  
*Special Assistant to the Attorney General.*

STANLEY E. DISNEY,  
MARCUS A. HOLLABAUGH,  
MONROE KARASIK,  
IRVING B. GLICKFELD,  
JOHN E. McCracken,

*Special Attorneys.*

ROBERT H. JACKSON,  
*Attorney General.*

THERMAN ARNOLD,  
*Assistant Attorney General.*

20 In the United States District Court for the  
Southern District of New York

[Title omitted.]

*Motion to vacate and quash service of summons and dismiss action*

Now come the defendants in the above entitled cause, jointly and severally, and appearing by their solicitors and attorneys specially and solely for the purpose of making this motion, and not intending to submit themselves to the jurisdiction of this Court as parties thereto, move the Court for an order as follows:

To vacate and quash the attempted service of the summons herein and to dismiss this case for lack of proper venue and want of jurisdiction over the persons of each and all of the defendants, for the following reasons, to wit:

(a) The said defendant, the Univis Lens Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio and not elsewhere, and is not doing business in the State of New York or within the district or jurisdiction of this Court, and was not found within said state of New York or within said district or the jurisdiction of this Court, and is not an inhabitant of nor amenable to service in said state of New York, or in said district or jurisdiction, and has not waived due service or process herein by voluntary appearance or otherwise.

21 (b) The said defendant, The Univis Corporation, is a corporation organized and existing under and by virtue

of the laws of the State of Delaware and not elsewhere, and is not doing business in the State of New York or within the jurisdiction of this Court, and was not found within said district or the jurisdiction of this Court, and is not an inhabitant or nor amenable to service in said State of New York, or in said district or jurisdiction, and has not waived due service of process herein by voluntary appearance or otherwise.

(c) The said individual defendants Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley, each and all at the commencement of this suit and during all times mentioned in the Bill of Complaint herein were each and all and are now inhabitants and resident citizens of the County of Montgomery, State of Ohio, in the Western Division of the Southern District of Ohio, and were not and are not now inhabitants or residents of the Southern District of New York or within the district or jurisdiction of this Court, and were not found within said state of New York or within said district or the jurisdiction of this Court, and are not amenable to service in said State of New York, or in said district or jurisdiction in this cause, and have not individually or jointly waived due service of process herein by voluntary appearance or otherwise.

Wherefore, the defendants, jointly and severally, pray that an order be made and entered herein setting aside the pretended service of summons herein, vacating said summons and dismissing this action.

Dated this 25th day of November 1940.

THE UNIVIS LENS COMPANY, INC.;  
 THE UNIVIS CORPORATION; JACK  
 R. SILVERMAN; MYER H. STANLEY;  
 G. F. STANLEY; and N. M. STANLEY,  
*Defendants.*

By TOULMIN & TOULMIN,  
*Attorneys, Appearing Specially.*  
*Address: Mutual Home Building, Dayton, Ohio.*

22 FREDERICK S. DUNCAN,  
*Address: New York Central Building,*  
*75 East 45 Street, New York City.*

H. A. TOULMIN,  
*Address: Mutual Home Building, Dayton, Ohio.*

H. A. TOULMIN, Jr.,  
 ROWAN A. GREER,  
*Address: Mutual Home Building, Dayton, Ohio.*  
*Solicitors and Of Counsel,*  
*Appearing specially for defendants.*



23 In United States District Court for the Southern  
District of New York

[Title omitted.]

*Affidavit of Jack R. Silverman in support of motion to vacate  
service of summons and to dismiss action*

STATE OF OHIO,

County of Montgomery, ss:

Jack R. Silverman, being first duly sworn according to law  
deposes and says:

My name is Jack R. Silverman and I am a citizen, inhabitant,  
and resident of the City of Dayton, Montgomery County, State of  
Ohio. My home address is 1435 Catalpa Drive in said City of Day-  
ton, State of Ohio, and I maintain no other residence of any char-  
acter in any other locality.

I am the president of The Univis Lens Company, Inc., and vice  
president of The Univis Corporation, the two corporate defend-  
ants in the above entitled cause, and I am also the Jack R. Silver-  
man named as one of the individual defendants therein.

I have been associated with said corporate defendants since their  
initial organization and am now and for a number of years past  
have been entirely familiar with the business of said corporations  
both in detail and in the maintenance of their respective general  
policies.

24 I further state that The Univis Lens Company, Inc. is a  
corporation duly organized and existing under and by virtue  
of the laws of the State of Ohio and its only place of business is  
located on Leo Street at Keowee Street, City of Dayton, State of  
Ohio. The other corporate defendant, The Univis Corporation, is  
a corporation duly organized and existing by virtue of the laws of  
the State of Delaware, and maintains a legal office at Wilmington,  
Delaware in accordance with the laws of that state, but its actual  
place of business and office is maintained at the same location as  
that of The Univis Lens Company, Inc., to wit, Leo Street at  
Keowee Street in the City of Dayton, State of Ohio, and it main-  
tains no other office or place of business elsewhere.

I further state of my own information and knowledge that the  
majority of the shares of stock of the said The Univis Corporation  
is owned by the said The Univis Lens Company, Inc., and the said  
The Univis Lens Company, Inc., controls and dictates the policy  
and activities of the said The Univis Corporation.

The principal and main business of the said The Univis Lens  
Company, Inc., and The Univis Corporation is the manufacture  
and sale of lenses and particularly, lenses known as bifocal lenses  
which incorporate certain features, elements, steps, and processes

covered by claims of Letters Patent of the United States and foreign countries and protected also under certain trade-marks registered in the Patent Office of the United States and other countries all owned or controlled by The Univis Corporation together with the licensing of others in the manufacture, use and sale of said lenses, under said Letters Patent, trade-marks, trade names, and the like.

I further state that neither The Univis Lens Company, Inc., nor The Univis Corporation has any branch office, bank account, or office of any kind or nature or maintains any stock of goods for sale or otherwise in the State of New York or elsewhere in the judicial district of the Southern District of New York and  
 25 that the name of neither one of said companies is listed in any telephone or other directory in said judicial district of the Southern District of New York and neither one of said companies has any officer, agent or representative of any character who is a resident or inhabitant of said State of New York or the Southern District of New York or who is in said State or district at any regular or stated period of time in connection with the business of either of said companies.

I further state that said corporate defendants The Univis Lens Company, Inc., and The Univis Corporation on occasions send traveling salesmen or solicitors all over the United States but that said traveling salesmen or solicitors are paid direct from the offices of the corporate defendants in Dayton, Ohio, and in no instance maintain any regular or permanent headquarters within the Southern District of New York or elsewhere other than the home offices of said corporations in Dayton, Ohio, and the trips made by said traveling salesmen or solicitors are not at any regular and fixed time nor do said traveling salesmen or solicitors remain in any locality on said trips any fixed or determined length of time nor longer than a period of 30 days upon any one trip. The duties of said traveling salesmen or solicitors are to try to interest optometrical establishments, optometrists, ophthalmologists, opticians, and others of high standing in said business or profession in taking out licenses under the patents of The Univis Corporation as to finishing by further manufacturing work upon and selling lenses as well as to solicit orders for said lenses and blanks partially manufactured by The Univis Lens Company, Inc.; that all licenses and orders for goods procured by said solicitors or salesmen are transmitted to the home offices of said corporate defendants in Dayton, Ohio, and not binding or effective until accepted and approved and at said home offices in Dayton, Ohio, and all orders for goods or products are delivered f. o. b. at the plant of

26 The Univis Lens Company, Inc., in Dayton, Ohio, the possession of said goods or products becoming that of the purchaser at the plant of The Univis Lens Company, Inc., in Dayton, Ohio, outside of the Southern District of New York. I further state that said solicitors or salesmen are not authorized and do not receive payment either as to said goods or products or under said licenses and have no authority to and do not make any adjustment or settlement of any account or difference in connection therewith between said customers or licensees and the corporate defendants.

I further state that neither said The Univis Lens Company, Inc., nor The Univis Corporation has ever considered that either one of said companies was or is doing business in the State of New York, or in the Southern District of New York and neither one of said companies has ever applied for or received any license or permit to do, transact, or carry on business in the State of New York or any other state under the law of said State of New York or any other state within the Southern District of New York and has never qualified to transact, do, or carry on business in said State of New York or in any other state within the Southern District of New York.

I further state that I personally and individually have never and do not now do any business in the state of New York or within the Southern District of New York and that while I have both solicited orders and licenses within said District as a salesman of said The Univis Lens Company, Inc., or The Univis Corporation, I have never sought any of said licenses or orders in any individual capacity and have at no time and do not now maintain any residence, citizenship, or office in said Southern District of New York or at any place other than Dayton, Ohio. I further state that at the time of the service of summons in the within action no one or any of the defendants named herein was found within the Southern District of New York but the service of said summons in this action was had by leaving a copy of the same with the individual defendants and officers of the corporate defendants by the United States Marshall for the Southern District of Ohio in Dayton, Ohio, on October 10, 1940.

27 I further state that I have not waived due service of process herein by voluntary appearance or otherwise and I am informed and believe that no one of the other defendants

named in the Bill of Complaint herein has in any way waived due service of process herein by voluntary appearance or otherwise.

Further affiant saith not.

JACK R. SILVERMAN.

Sworn to and subscribed before me the undersigned Notary Public in and for Montgomery County, State of Ohio, this 20th day of November 1940 A. D.

RUBY M. ECK,

Notary Public,

Montgomery County, State of Ohio.

[Ruby M. Eck, Notary Public in and for Montgomery County, Ohio. My Commission Expires Jan. 21, 1941.]

28 In United States District Court for the Southern  
District of New York

[Title omitted.]

*Affidavit of Myer H. Stanley in support of motion to vacate service  
of summons and to dismiss action*

STATE OF OHIO,

County of Montgomery, ss.:

Myer H. Stanley, being first sworn according to law, makes oath and deposes as follows:

My name is Myer H. Stanley and I am the Myer H. Stanley named as one of the individual defendants in the above entitled cause. I am also the president of The Univis Corporation and secretary of The Univis Lens Company, Inc., the corporate defendants therein.

I am a citizen of the United States and at all times hereinafter mentioned was and now am a resident and inhabitant of the City of Oakwood, a suburb of the City of Dayton, Montgomery County, State of Ohio, within the Western Division of the Southern District of Ohio and at no time have I been a citizen, resident, or inhabitant of any other state and particularly, have never been a citizen, resident, or inhabitant of any state within the Southern District of New York. My place of business is and at all times has been in the City of Dayton, State of Ohio and I have

29 never maintained and do not now maintain any office in the state of New York or within the Southern District of New York, and I have never engaged in business in said State of New York or said Southern District of New York.

I further state that at the time of the service on me of the summons in this action on October 10, 1940, I was not found in the State of New York, the Southern District of New York, or within the jurisdiction of this Court, but on the contrary was served with a copy of said summons by the United States Marshall



for the Southern District of Ohio in the city of Dayton, Ohio. I further state that at the time of the filing of the Bill of Complaint herein and the attempted service of summons herein, The Univis Lens Company, Inc., The Univis Corporation, and the other individual defendants were not found within the State of New York, the Southern District of New York, or within the jurisdiction of this Court. On the contrary, said corporate defendants and other individual defendants were attempted to be served with summons in this case by having a copy thereof left with them at their place of business in the City of Dayton, State of Ohio, by the United States Marshall for the Southern District of Ohio on October 10, 1940.

I further state that neither I nor any of the other defendants herein have ever waived due service of process herein by voluntary appearance or otherwise.

I further state that I have been continuously and actively connected with the said corporate defendants, The Univis Lens Company, Inc. and The Univis Corporation since their organization and creation and am thoroughly familiar with their respective businesses and affairs and their operations. The business of The Univis Corporation is that merely of granting licenses for the manufacture and sale of lenses or partially completed lens blanks under Letters Patent, trade-marks, and copyrights owned or controlled by said company and the business of The Univis Lens Company, Inc. is that of making and selling lenses or partially completed lens blanks and the like to others under said

30 Letters Patent, trade-marks, and copyrights; that said The Univis Lens Company, Inc. is an Ohio corporation and The Univis Corporation a Delaware Corporation with The Univis Lens Company, Inc. owning a majority of the stock and controlling the activities of The Univis Corporation.

I further state that while I and the other individual defendants, G. F. Stanley and N. M. Stanley are officers of both the said corporate defendants, none of said individual defendants has in any way participated in, transacted, or done, any business within the Southern District of New York for said corporate defendants either individually or as agents or representatives of said corporate defendants and has never qualified or obtained permission to do business in any state within said Southern District of New York under the laws of any state in said District. I further state that neither one of said corporate defendants has ever been qualified or obtained permission to do business under the laws of any state or within the Southern District of New York and it has never been considered that said corporate defendants were ever doing or transacting business in said Southern District of New York.

I further state that said The Univis Corporation and The Univis Lens Company, Inc., maintain their offices in the City of Dayton, Ohio, and nowhere else with the exception that the said The Univis Corporation does have an office in the State of Delaware in accordance with the laws of that state as to a Delaware corporation.

The corporate defendants, The Univis Corporation and The Univis Lens Company, Inc., grant the licenses issued and make all sales at their respective offices in the City of Dayton, Ohio, maintain no stock of goods and have no property of any kind within the Southern District of New York and do not hold out and have never held out themselves, directly or indirectly, as doing business within said District and have no agents, officers, or representatives residing in or an inhabitant of said Southern District of New York.

31 Said corporate defendants do send on occasion traveling solicitors or salesmen all over the United States including the territory within the Southern District of New York for the purpose of soliciting orders only for goods or the taking of licenses but all such orders or licenses so solicited are subject to acceptance or rejection at the home office of said companies in Dayton, Ohio, and are not binding until so accepted. Said traveling salesmen or solicitors have no authority to collect or receive any payment for or on behalf of either one of said corporate defendants or to settle or adjust any account or difference, all payment being made and such settlements had direct with the home office of said companies in Dayton, Ohio, and all goods shipped on said orders being delivered and possession thereof turned over to the purchasers f. o. b. the plant of The Univis Lens Company, Inc., in Dayton, Ohio, outside of the Southern District of New York with all transportation, freight, or carriage charges paid by said customer.

I further state that I have read the affidavit of the other individual defendant herein, Jack R. Silverman, executed the 20th day of November 1940, and know the contents thereof, and state that all facts stated therein are the truth, the whole truth and nothing but the truth.

Further affiant saith not.

(S) MYER H. STANLEY,

Sworn to and subscribed before me, the undersigned Notary Public in and for the County of Montgomery, State of Ohio, this 20th day of November 1940.

(S) JOS. C. EISMANN,

*Notary Public,*

*County of Montgomery, State of Ohio.*

[Jos. C. Eismann, Notary Public. My Commission Expires Sept. 10, 1941.]



32 In United States District Court for the Southern  
District of New York

[Title omitted.]

*Affidavit of G. F. Stanley in support of motion to vacate service  
of summons and to dismiss action*

STATE OF OHIO,

*County of Montgomery, ss:*

G. F. Stanley, being first duly sworn according to law, makes  
oath and deposes as follows:

My name is G. F. Stanley and I am the G. F. Stanley named as  
one of the individual defendants in the above entitled cause.

I am and for more than twenty years have been continuously  
a citizen, resident, and inhabitant of the City of Oakwood, Mont-  
gomery County, Ohio, a suburb of Dayton, Ohio, and have  
33 never maintained any residence, home, office, or citizenship  
anywhere else or within the Southern District of New York.

I have no bank account, stock of goods, or property of any kind  
or character within said Southern District of New York and do  
not and have not carried on, conducted, or transacted any business  
within said District. My name does not appear in any city, tele-  
phone, or other directory within said District and at the time of  
the attempted service of summons in the within cause I was not  
found within said Southern District of New York and have never  
waived due service of process herein by voluntary appearance or  
otherwise.

I am the Vice President of the Univis Lens Company, Inc., an  
Ohio Corporation, and Secretary and Treasurer of The Univis  
Corporation, a Delaware corporation. I have been connected with  
both of said corporations ever since their creation and am entirely  
familiar with the business conducted by each and both of them and  
their respective activities in every way.

I have read the affidavits of the other individual defendants,  
Jack R. Silverman, Myer H. Stanley, and N. M. Stanley, sub-  
mitted in this case and executed on the 20th day of November 1940  
and know the contents thereof and state that the facts set forth

in said affidavits are the truth, the whole truth, and nothing  
34 but the truth, and I do hereby adopt said affidavits and  
their recital of facts the same as if executed by me and set  
forth herein verbatim.

Further affiant saith not.

(S) GEORGE F. STANLEY.

Sworn to and subscribed before me, the undersigned Notary  
Public, in and for the County of Montgomery, State of Ohio, this  
20th day of November 1940.

(S) JOS. C. EISMANN,

Notary Public,

County of Montgomery, State of Ohio.

[Jos. C. Eismann, Notary Public. My Commission Expires  
Sept. 10, 1941.]

35 In United States District Court for the Southern  
District of New York

[Title omitted.]

*Affidavit of N. M. Stanley in support of motion to vacate service  
of summons and to dismiss action*

STATE OF OHIO,

County of Montgomery, ss:

N. M. Stanley, being first duly sworn according to law, makes  
oath and deposes as follows:

My name is N. M. Stanley and I am the N. M. Stanley named  
as one of the individual defendants in the above entitled cause.  
I am the father of the other two individual defendants Meyer H.  
Stanley and G. F. Stanley. I am a resident citizen and inhabitant  
of the City of Dayton, Ohio, and have been such continuously for  
a period of more than thirty years and do not maintain any resi-  
dence, home, office, or place of business elsewhere. My name is  
not listed in any city, telephone, or other directory within the  
Southern District of New York and I do not carry any bank  
account, stock of goods, and have no property of any kind within  
said District.

I am primarily responsible for the creation and organization of  
the two corporate defendants herein, The Univis Lens Com-  
pany, Inc., an Ohio corporation, and The Univis Corpora-  
tion, a Delaware corporation, and I am the Chairman of the  
36 Board of Directors of both of said companies. I am like-  
wise entirely familiar and have an intimate knowledge of  
all of the business and activities of either one or both of said com-  
panies from their creation to date. I have read the affidavits of  
the other individual defendants, Jack R. Silverman, Myer H. Stan-

ley, submitted herein, and executed on the 20th day of November 1940, and know the contents thereof and state that the facts set forth therein are the truth, the whole truth, and nothing but the truth, and I hereby adopt said affidavit the same as if executed by myself.

I was not found within the Southern District of New York at the time of the attempted service of the summons herein and have not waived due service of process by voluntary appearance or otherwise.

Further affiant saith not.

N. M. STANLEY.

Sworn to and subscribed before me, the undersigned Notary Public, in and for the County of Montgomery, State of Ohio, this 20th day of November 1940.

RUBY M. ECK,  
Notary Public,  
County of Montgomery, State of Ohio.

[Ruby M. Eck, Notary Public in and for Montgomery County, Ohio. My Commission Expires Jan. 21, 1941.]

37 In District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Notice of motion*

To SAMUEL S. ISSEKS, Esq.,  
Attorney for Plaintiff,  
Federal Building, Foley Square, New York, N. Y.

SIR: Please take notice that upon the "Motion to Vacate and Quash Service of Summons and Dismiss Action" dated November 25, 1940, and the Affidavits of Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley, attached to said Motion, all of which were filed with the Clerk of this Court on the 26th day of November 1940 and copies of which are attached to this Notice and are now served upon you as attorney for the plaintiff, the undersigned, appearing specially for the defendants herein solely for the purpose of objecting to the venue and of questioning the jurisdiction of this Court over said defendants, will move this Court at a motion term thereof to be held at Room 506 in the Federal Building, Foley Square, Borough of Manhattan, City of New York, on the 9th day of December 1940 at 10:30 a. m., or as soon thereafter as counsel can be heard, for an Order vacating and quashing the attempted service of the summons herein and dismissing this case for lack of proper venue and want of

38 jurisdiction over the persons of each and all of the defendants and for such other relief as may appear appropriate.

Yours, &c.,

(Sd.) FREDERICK S. DUNCAN,

(Sd.) TOULMIN & TOULMIN,

*Solicitors appearing specially for defendants for presentation of this Motion; Office & P. O. Address, Room 608, No. 75 East 45th Street, New York, N. Y.*

Service of the above notice of motion and of copies of the motion and affidavits therein mentioned is admitted this 26th day of November 1940.

(Sd.) STANLEY L. DISNEY,

*Attorney for Plaintiff.*

39 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Affidavit of Walter Conrad in opposition to motion to vacate service of summons and to dismiss action.*

STATE OF NEW YORK,

*County of New York, ss:*

I, Walter Conrad, am a supervisor of the work of Louis Friedlander, Inc., engaged in the optical wholesale business at 71 Nassau Street, in the Borough of Manhattan, City of New York, State of New York. I have been employed by this company for about 33 years. This company has been a Univis licensed wholesaler for approximately ten years.

About a year ago Mr. Virgil Hancock, a representative of the Univis Lens Company, called on Louis Friedlander, Inc. in the company of Mr. Milton Silverman, also a representative of the Univis Lens Company. Mr. Hancock is a technical man, and he explained that the purpose of his visit was to see whether or not we understood the working of the "slab off" bifocal. He asked me if I was acquainted with the manner in which this bifocal should be ground, and I stated that I did.

I have read the above statement of two pages and swear it is true to the best of my knowledge and belief.

(S) WALTER CONRAD.

Subscribed and sworn to before me this 17th day of December 1940.

(S) MARY MERVISH,

*Notary Public.*

[Mary Mervish, Notary Public, Kings Co. Clk's No. 486, Reg. No. 1079. New York Co. Clk's No. 129, Reg. No. —. Commission expires March 30, 1941.]

41 In the District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Affidavit of Jacob Lampert in opposition*

STATE OF NEW YORK,

*County of New York, ss:*

I, Jacob Lampert, am the president of M. E. Stern, Inc., which is engaged in the optical wholesale business at 71 Nassau Street, in the Borough of Manhattan, City of New York, State of New York, and within the Southern District of the State of New York.

To the best of my recollection, M. E. Stern, Inc., has been a licensee of The Univis Lens Company, Inc., for a period of at least eight years, and is still so licensed. By the terms of this license, M. E. Stern, Inc., is required to sell Univis lenses at minimum prices established by The Univis Lens Company and only to retailers licensed by The Univis Lens Company.

I have made a personal examination of the records of M. E. Stern, Inc., which records disclose that this company purchased a total of 320 pairs of lens blanks from The Univis Lens Company at a total cost of \$1,073.21 from the 1st day of January 1940 to the 1st day of December 1940.

42 M. E. Stern, Inc., resells Univis lenses to customers both within the State of New York and outside of the State of New York.

I am advised that The Univis Lens Company does not now maintain such New York office as it at one time in the past maintained. However, the business done by The Univis Lens Company has been in no important respect affected or impeded by the closing of such New York office. Now, as in the past, it has been the custom of M. E. Stern, Inc., to have all its orders for Univis lenses filled by the Dayton, Ohio, office of Univis.

It is my belief that Mr. Milton Silverman handles the Univis licensing program in New York City and in the past it has been the custom of M. E. Stern, Inc., to deal with Mr. Silverman concerning these matters.

During the past year, Mr. Milton Silverman and Mr. Virgil Hancock called on M. E. Stern, Inc., for the purpose of instructing Stern in the grinding of slaboff lenses, and representatives of M. E. Stern, Inc., have in the past attended meetings in New York City and there received technical instructions in the finishing of Univis lenses from representatives of Univis. Mr. Hancock was present at such meetings.



I have recently inspected the current list of licensed Univis retailers and believe that there are from 125 to 150 retail optician Univis licensees in the City of New York.

I have read the above statement of two pages and swear it is true to the best of my knowledge and belief.

(S) JACOB LAMPERT.

Subscribed and sworn to before me this 18th day of December 1940.

(S) JOHN J. OLEAR, Jr.,

John J. Olear, Jr.,

Notary Public,

N. Y. Co. No. 95, Reg. No. 1-0-97.

Commission expires March 30, 1941.

43 In District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Affidavit of Aaron Klein in opposition to motion to vacate service  
of summons and to dismiss action*

STATE OF NEW YORK,

County of New York, ss:

I, Aaron Klein, hereby swear that I am Vice President of the Hygrade Optical Company, engaged in the optical wholesale business at 30 East 23rd Street, in the Borough of Manhattan, City of New York, State of New York. To the best of my recollection, the Hygrade Optical Company has been a wholesaler licensed by the Univis Lens Company to use Univis lenses for about ten years.

By the terms of the license issued to the Hygrade Optical Company by the Univis Lens Company, the Hygrade Optical Company is required to resell Univis lenses at minimum prices fixed by the Univis Lens Company, and only to retailers licensed by the Univis Lens Company.

On examining the correspondence of the Hygrade Company, I hereby swear that on June 15, 1940, said Univis Lens Company wrote to the Hygrade Company instructing it not to sell certain merchandise to one Nathan R. Schutz until said Nathan R.

44 Schutz was licensed by said Univis Lens Company to use Univis products. Thereafter, Nathan R. Schutz applied for an application and the Hygrade Optical Company was in-

formed on July 5, 1940, by the Univis Lens Company that this application had been approved, and that thereafter the Hygrade Optical Company could sell Univis lenses to Nathan R. Schutz.

Also, upon examining my correspondence, I hereby swear that I received a letter from the Univis Lens Company, dated July 29, 1940, informing me that Belz, Inc., had been given a retail finishing license by the Univis Lens Company. This letter enclosed a list from the Univis Lens Company of the prices to be charged by the Hygrade Optical Company for sales of Univis lenses to Belz, Inc.

As an officer of the Hygrade Optical Company, I made a personal inspection of the orders placed by this company with the Univis Lens Company for lens blanks during the period from January 2, 1940, to December 4, 1940, and hereby swear that said Hygrade Optical Company during this period, purchased a total of \$1,912.70 worth of lenses from said Univis Lens Company.

I hereby swear that it has been the custom of the said Hygrade Optical Company to make a report monthly to the Univis Lens Company, stating the total number of lens blanks sold by said Hygrade Optical Company during said month and listing the customers to whom said lenses were sold.

I hereby swear that, to the best of my knowledge, the Univis Lens Company had an office in the Borough of Manhattan, City of New York, until about a year ago.

To the best of my knowledge, the salesman for the Univis Lens Company calls on the Hygrade Optical Company once every two or three months. This salesman, to the best of my recollection, has always been Milton Silverman.

Most of our orders are sent to the Univis Lens Company direct and our payments are made to the Univis Lens Company direct.

45 At the time we were licensed a representative of the Univis Lens Company called on the Hygrade Optical Company and made an inspection of the type of merchandise we sold and the facilities we carried for grinding lenses. He made his recommendation as a result of this inspection and we were licensed shortly thereafter.

I hereby swear that from time to time the Univis Lens Company writes the Hygrade Optical Company inquiring whether or not Hygrade considers certain retailers are carrying on their business in an ethical manner. On looking through my file, I notice that I received such a request on July 8, 1940, asking further details on one Charles H. Halpern.

I have read the above statement of three pages and swear it is true to the best of my knowledge and belief.

(S) AARON KLEIN.

Subscribed and sworn to before me this 12th day of December 1940.

(S) ABRAHAM KRUEZ,  
Notary Public.

[Notary Public Bronx County No. 132. New York Co. Clerk's No. 463, Register No. 1 K 273. Commission expires March 30, 1941.]

46

In District Court of the United States  
for the Southern District of New York

[Title omitted.]

*Affidavit of John A. Keenan in opposition to motion*  
STATE OF NEW YORK,  
County of New York, ss:

I, John A. Keenan, am a retail optician located at 80 East 40th Street, in the Borough of Manhattan, City of New York, State of New York, and within the Southern District of the State of New York.

I am licensed as a retailer by The Univis Lens Company of Dayton, Ohio. I have held this license for one month more or less. I had applied for this license through the Lehmann Optical Company and my application had been delayed. I then requested the Lehmann Optical Company to seek reconsideration of my application by The Univis Lens Company and the Lehmann Optical Company complied with this request. I subsequently was visited by Mr. Milton Silverman who stated that he represented The Univis Lens Company and who questioned me concerning my application and my qualifications as an applicant for a Univis retailer's license. Subsequent to Mr. Silverman's call a retailer's license was issued to me by The Univis Lens Company.

47

I hereby state that Mr. Milton Silverman called on me for the purpose of passing on my qualifications as an applicant for Univis retailer's license. I believe that Mr. Silverman handles this aspect of the Univis licensing program in New York City.

To the best of my knowledge there are at least 14 Univis wholesale licensees in the Borough of Manhattan. As a Univis retailer

licensee I am required to resell Univis Lenses subject to terms of the license contract. On the resale of a pair of Univis lenses costing me approximately \$8 it is my custom to charge approximately \$16. I therefore state that the average mark-up on Univis lenses sold by me is approximately 100%.

I have read the above statement of two pages and swear it is true to the best of my knowledge and belief.

(S) JOHN A. KEENAN.

Subscribed and sworn to before me this 19th day of December 1940.

(S) JOHN J. O'LEAR, Jr.,

John J. O'Learn, Jr.,

Notary Public, N. Y. Co., No. 95, No. 1-0-97.

Commission Expires March 30, 1941.

48 In District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Affidavit of Max Zadek in opposition to motion*

STATE OF NEW YORK,

County of New York, ss:

I, Max Zadek, am president of Max Zadek, Inc., who are wholesale opticians, located at 115 Fulton Street, in the Borough of Manhattan, City of New York, and within the Southern District of New York. Max Zadek, Inc., is a licensee of the Univis Lens Company and, to the best of my recollection, has held such license ever since the Univis licensing system was begun, a period which I estimate to be approximately ten years. Max Zadek, Inc., is required by its license from the Univis Lens Company to resell Univis lenses at minimum prices fixed by said Univis Lens Company and to resell only to retailers licensed by the Univis Lens Company. Max Zadek, Inc., resells Univis lenses both in the State of New York and outside of the State of New York.

49 I know Mr. Milton Silverman, whom I believe to be the local representative of the Univis Lens Company. I also know Mr. Jack Silverman, whom I believe to be the brother of Milton Silverman. Both of these men have in the past year dealt with me or with Max Zadek, Inc., in relation to business matters between Max Zadek, Inc., and the Univis Lens Company. One form of this contact between Max Zadek, Inc., and the Univis Lens Company concerns the licensing by Univis of retailer opticians. It is frequently the case, when a retailer application has been sub-

mitted by Max Zadek, Inc., to the Univis Lens Company, that the application will be refused by the Univis Lens Company. In such cases, Jack or Milton Silverman has sometimes called on me or on Max Zadek, Inc., to explain the rejection and to find out from me whether or not the applicant could be expected to buy enough merchandise to warrant issuing a license to him. Milton Silverman has been in contact with me or with Max Zadek, Inc., four or five times in the last year concerning such licensing matters. I remember that one of the applicants for whom I finally secured a Univis license through Milton Silverman within the past year was Herbert Moss of Woodbridge, New Jersey.

Mr. Milton Silverman called on Max Zadek, Inc., as recently as a week ago on business matters and it is his custom to frequently call on this firm. It is my belief that the Univis Lens Company no longer maintains the New York office which it in past years maintained in the Borough of Manhattan. Since this change, Max Zadek, Inc., has sent its orders for Univis lenses directly to the main office of the Univis Lens Company, at Dayton, Ohio, instead of sending them to the Univis Lens Company at New York, as had previously been its practice. Apart from this change, the relations of Max Zadek, Inc., and the Univis Lens Company are substantially unchanged.

50 I know that Mr. Milton Silverman frequently lectures on matters relating to Univis lenses to groups of opticians in the City of New York and vicinity.

As president of Max Zadek, Inc., I have made a personal check of the record of purchases placed by this company with the Univis Lens Company for lens blanks during the period from January 1, 1940, to December 1, 1940, and hereby swear that Max Zadek, Inc., during this period, purchased a total of 418½ pairs of lens blanks at a total cost of \$1,475.19 from said Univis Lens Company. It has been and still is the custom of Max Zadek, Inc., to make a monthly report to the Univis Lens Company, setting out the total number of Univis lens blanks sold by Max Zadek, Inc., during the particular month and listing the customers to whom these lens blanks were sold.

I have examined the correspondence between Univis Lens Company and Max Zadek, Inc., and letters or copies of letters constituting a part of such correspondence indicated as follows, to the truth of which I hereby swear: That on January 26, 1940, Univis Lens Company of Dayton, Ohio, by L. V. Browne, wrote Max Zadek, Inc., "On request from Mr. Milton Silverman, we are sending to you a series of letters for your use in mail campaign with Univis licensees, according to his discussion with you."



That on April 5, 1940, Max Zadek, Inc., wrote the Univis Lens Company in Dayton, Ohio, "Answering your night letter of April 4th, we wish to assure you that the Titmus Optical Company did not get any encouragement from us. It is the writer's hope that every one of their customers will take the same attitude as we have taken."

In reference to the January 26, 1940 letter, it is my present recollection that the discussion between Mr. Silverman and myself therein referred to concerned the advertising program  
51 of the Univis Lens Company in reference to which Mr. Silverman sought and received my advice and comments on proposed advertising then under consideration by the Univis Lens Company. This took place in my office in Manhattan.

In reference to the April 5, 1940 letter, it is my present recollection that the night letter of April 4th from Univis Lens Company was a long telegram explaining plans of the Titmus Optical Company to produce a flat top bifocal. The telegram requested my cooperation in discouraging this plan of the Titmus Optical Company and this request was construed by me to be a request to make Titmus Optical Company realize that I had no intention of purchasing their flat top bifocal lens from them if they were to manufacture them, and I did so advise the Titmus Optical Company and the Univis Lens Company was advised of this cooperation in the letter of April 5, 1940 hereinbefore referred to.

I have read the above statement of four pages and swear it is true to the best of my knowledge and belief.

(S) MAX ZADEK.

Subscribed and sworn to before me this 20th day of December 1940.

(S) JOHN J. OLEAR, JR.,  
Notary Public.

[John J. Olear, Jr., Notary Public, N. Y. Co. No. 95, Reg. No. 1-0-97. Commission Expires March 30, 1941.]

52 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Affidavit of Joe Goodstein in opposition to motion*

STATE OF NEW YORK,

*County of New York, ss:*

I, Joe Goodstein, am president of the North Star Optical Company, Inc., which is engaged in the optical wholesale business at 79 Chambers Street, in the Borough of Manhattan, City of New York, State of New York. I have occupied this position since the organization of the North Star Optical Company in March, 1937. Shortly after the organization of this company it was

granted a wholesalers' license by the Univis Lens Company to handle Univis lenses. Under the terms of this license, the Univis Lens Company requires the North Star Optical Company to resell Univis lenses only to retailers licensed by the Univis Company and at the wholesale prescription price list established by the Univis Lens Company.

I have made an examination of the records of the North Star Optical Company and find that during the 12 months of 1939 it purchased a total of \$2,951.19 worth of lens blanks from the Univis Lens Company. During the first eleven months of 1940, the North Star Optical Company purchased a total of \$2,681.20 worth of lens blanks from the Univis Company, its monthly purchases being as follows:

January	\$217. 61
February	228. 32
March	235. 53
April	315. 06
May	271. 02
June	130. 52
July	244. 08
August	292. 39
September	232. 57
October	328. 69
November	185. 41
Total	\$2,681. 20

The North Star Optical Company grinds Univis lens and supplies them to customers in a finished form. About 75% of the finished Univis lenses sold by North Star are sold to customers outside the State of New York.

The North Star Optical Company received a letter dated November 8, 1940, from the Univis Corporation, which said, in part:

"This will acknowledge franchise application for Albert V. Saradarian, M. D., Union City, N. J. We are referring to Mr. Milton Silverman, and you will be advised of disposition promptly on receipt of his report."

On August 28, 1940, the North Star Optical Company received a letter from the Univis Corporation which said, in part, as follows:

"We have received the franchise application you submitted for Thaddeus W. Bartles, O. D., Bristol, Conn. It is being referred to our New England Manager for attention and we will advise you regarding action on the application on receipt of his report."

On February 16, 1940, the Univis Corporation wrote the North Star Optical Company, in part, as follows:

"This is to advise that the application of the following has been approved on your nomination and the usual notification issued; please add his name to your Univis list: H. Z. Kudon, O. D., Albany, New York."

Also, on April 3, 1939, The Univis Corporation wrote Dr. Stephen W. Hall of Bridgeport, Conn., in part as follows, sending a copy of this letter to me:

54 "This is to advise that we have received your application for Univis franchise, on the nomination of North Star Optical Co., and we are referring it to our representative in charge of the territory. He will take the matter up with you on his next visit to Bridgeport (which will be in about two weeks), and on receipt of his report the application will come before the Licensing Committee for action—as is our custom."

I know Milton Silverman, the representative of the Univis Lens Company. When the Univis Company had an office in New York City, I was accustomed to call Mr. Silverman, or the young lady in this office, to place orders for lens blanks. This office closed about a year ago. Since that time, the North Star Optical Company has placed its orders directly with the Univis Lens Company in Ohio. At the present time it is not our custom to give orders to Mr. Silverman on his occasional visits to our office. Mr. Silverman visits my company or telephones about three or four times a year.

In the file of the North Star Optical Company I found the carbon of a letter written by me on June 17, 1939, to the Univis Lens Company, which said, in part:

"We are enclosing a Univis application for Dr. F. R. Cooley.

"We have discussed this case with Mr. Silverman and as he intends to be out of town this week he asked us to send this application directly to you."

My recollection is that I discussed this matter over the telephone with Mr. Silverman and told him that Dr. Cooley would be a very desirable licensee.

On examining the correspondence of the North Star Optical Company, I find a carbon of a letter dated July 29, 1940, in which I recommended Dr. H. A. Wilson for a Univis license. By a letter dated July 31, 1940, the Univis Corporation informed me as follows:

"We regret to advise that the application of Dr. H. A. Wilson of Kingston, N. Y., cannot be approved at this time. Our previous information is that his type of practice would not fit into the Univis picture. We enclose a copy of our letter to him, for your information."

55 A letter, also dated July 31, 1940, directed to Dr. Wilson, which was enclosed, provided in part:

"With respect to your application for a Univis license, it is a matter of great regret to us to advise you that for the time being we feel it would not be feasible to issue this license.

"There are so many factors entering into this decision that it would not be helpful to recite them in this letter, but we want you

to know that we appreciate the interest you have shown in this application."

No reason was given to me and I was never consulted in regard to this application of Dr. Wilson. The Univis Company never informed me why the application was turned down.

On August 8, 1940, the North Star Optical Company communicated with the Univis Lens Company as follows:

"We would appreciate it very much if you will let us know when Mr. Milton Silverman will be in New York. We would like to discuss Dr. E. C. Fassett's of Kingston, New York, Univis license with Mr. Silverman."

By a letter dated August 12, 1940, the Univis Lens Company replied as follows:

"We have forwarded a copy of your letter of the 8th to Mr. Milton Silverman and have asked him to communicate with you.

"With kindest regards, we remain."

In the letter dated August 8, 1940, I requested that Mr. Silverman call on me, because it was my understanding that his recommendation would be final in regard to this matter.

According to my recollection, about a year and a half ago Mr. Silverman called me over the telephone and invited me and my surface grinders to a supper meeting to be attended by Univis finishing licensees, for the purpose of demonstrating the proper way to grind "slab-off" Univis bifocals. This meeting was held in a midtown hotel in New York City. I attended with my head surface grinder and another grinder.

56 At this meeting Mr. Silverman and Virgil Hancock represented the Univis Lens Company. Mr. Hancock gave a lecture on how to surface grind the "slab-off" bifocal, illustrating it by use of a blackboard and by distributing pamphlets of instruction. He answered all questions concerning this process of grinding.

If I had a technical problem on the grinding of Univis bifocals, I would refer it to Mr. Hancock in Dayton, because it is my understanding that he is in charge of that type of work for the Univis Lens Company.

I have read the above statement of five pages and swear it is true to the best of my knowledge and belief.

(S) JOE GOODSTEIN.

Subscribed and sworn to before me this 9th day of January 1941.

(S) HENRY K. CHAPMAN,  
Notary Public.

[Henry K. Chapman, Notary Public, Bronx County. Bronx Co. Clk No. 31 Reg. No. 73C41. N. Y. Co. Clk No. 419 Reg. No. 1C273. Commission expires Mar. 30, 1941.]

57 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Affidavit of Harry Seulowitz in opposition to motion*

STATE OF NEW YORK,

*County of New York, ss:*

I, Harry Seulowitz, am a partner of August Neuse & Co., wholesale opticians, located at 35 East 125th Street, in the Borough of Manhattan, City of New York, State of New York, and within the Southern District of the State of New York.

August Neuse & Co., for the past five years, has been and still is a licensee of The Univis Lens Company. As a licensee, it is required to sell Univis lenses at minimum prices fixed by said The Univis Lens Company and to sell them only to retailers licensed by The Univis Lens Company.

August Neuse & Co. sells Univis lenses to customers both within the State and City of New York and outside of the State of New York.

Based upon the records of August Neuse & Co., which I have personally examined, during the period from January 1, 1940 to December 1, 1940, August Neuse & Co. purchased from The Univis Lens Company a total of 1,036 pairs of lens blanks at a total cost of \$3,368.44.

58 It has been the custom of August Neuse & Co. to make a monthly report to The Univis Lens Company setting out the total number of Univis lens blanks sold by August Neuse & Co. during the particular month, and listing the customers to whom these lens blanks were sold.

I am aware that The Univis Lens Company no longer maintains such New York office as it previously maintained. This change has made but little difference in the business relationship of August Neuse & Co. and The Univis Lens Company except for the fact that that portion of the orders which were filled for August Neuse & Co. by the New York office are now filled from the Dayton, Ohio, office of The Univis Lens Company. Furthermore, August Neuse & Co. deals with the same people in relation to Univis matters now as it dealt with prior to the closing of the New York office. Such people include Mr. Milton Silverman and Mr. Virgil Hancock.

About a year and a half ago I attended a meeting of Univis wholesaler licensees in a New York City midtown hotel. This meeting was attended by about fifty or sixty wholesalers and their respective prescription clerks and shopmen. I received an



invitation to attend this meeting from Milton Silverman, who informed me that the purpose of the meeting was to explain and illustrate the slab-off prism, which is a type or method of grinding the bifocal lens. At the meeting Mr. Virgil Hancock, whom I knew for several years past to be a Univis technical representative, explained the mechanics of figuring out the slab-off and also demonstrated the particular technique required to grind under this method. Besides this actual demonstration I, along with the other wholesalers, received charts and literature explaining the whole slab-off prism method of grinding.

According to the accepted practice, within the past year I have suggested that the Univis Company license at least two particular retailers, namely, Mr. Reinholtz of Port Chester, N. Y., and Mr. Atkins of New York City. The request concerning the former

was made about eight or nine months ago, and the request  
59 concerning the latter about a month and a half ago.

Shortly after the making of these requests, Milton Silverman telephoned me from New York City and made these inquiries concerning the two individuals I had suggested: (1) the type of merchandise, especially of bifocals, which the individuals handled, that is, whether they handled the better or the cheaper quality of merchandise; (2) the character of the individuals, whether or not they were reputable businessmen, advertised prices, were engaged in what is commonly known as "cut-rate" business, and whether they would fit into the general over-all picture of the Univis licensing scheme; (3) whether the individuals were dispensing opticians or optometrists. I answered these questions to the best of my ability knowing that the information I gave Mr. Silverman would be used as a basis for determining whether or not the individuals would be licensed by Univis. Both of these individuals were subsequently licensed by the Univis Company.

Within the past month we sold some Univis lenses to Dr. Feinbloom, of New York City, and shortly thereafter Victor Hancock, of the Univis Lens Company, telephoned me. Mr. Hancock informed me that Dr. Feinbloom was not a Univis licensee, and, therefore, we should cease selling him Univis lenses, because such sales were in violation of our contract with the Univis Company. Mr. Hancock called me from New York City.

Ever since we have been Univis licensees we have received a monthly bulletin, which I understand is sent to all retailer and wholesaler licensees. These bulletins are in the nature of advertising matter to aid additional purchases of Univis lenses, especially by the retailer licensees, who are the ones who ultimately deal with the public. These bulletins, among other things, explain the advantages of using Univis lenses, especially in particular designated and described cases. At times these bulle-

60 tins also contain certain technical information which aided both the retailer and the wholesaler in filling certain prescriptions.

I have read the above statement of four pages and swear it is true to the best of my knowledge and belief.

(S) HARRY SEULOWITZ.

Subscribed and sworn to before me this 2nd day of January 1941.

(S) JOHN J. O'LEAR, Jr.,

Notary Public.

[John J. O'Learn, Jr., Notary Public, N. Y. Co., No. 95, Reg. No. 1-0-97. Commission Expires March 30, 1941.]

61 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Affidavit of Walter E. Lehmann in opposition to motion*

STATE OF NEW YORK,

County of New York, ss:

I, Walter E. Lehmann, am president of the Lehmann Optical Co., of 21 West 46 Street, in the borough of Manhattan, in the city of New York and within the Southern District of New York. The Lehmann Optical Co. is engaged in the optical wholesale business. It is now a licensee of the Univis Lens Company and has been such for the past five years. The Lehmann Optical Co. resells Univis lenses, as a licensee, both in the State of New York and outside of the State of New York.

The Lehmann Optical Co. is required by its license from the Univis Lens Company to resell Univis lenses at minimum prices fixed by said Univis Lens Company and to resell said lenses only to retailers licensed by the Univis Lens Company.

62 As an officer of the Lehman Optical Company, I made a personal check of the company records, showing orders placed by this company with the Univis Lens Company for lens blanks during the period from Jan. 1, 1940, to Dec. 1, 1940, and hereby swear that the Lehmann Optical Co., during this period, purchased a total of 599 lens blanks at a total cost of \$2,057.26 from said Univis Lens Company. It has been and still is the custom of the Lehmann Optical Co. to make a monthly report to the Univis Lens Company, setting out the total number of Univis lens blanks sold by the Lehmann Optical Co. during the particu-

lar month and listing the customers to whom these lens blanks were sold.

I know Mr. Milton Silverman, whom I believe to be the local representative of the Univis Lens Company. He has visited the Lehmann Optical Company two or three times during the past year, always concerning business matters between the Lehmann Optical Co. and the Univis Lens Company. I am informed that the Univis Lens Company no longer maintains such New York office as it maintained prior to January 1, 1940. At all times both prior and subsequent to January 1, 1940, it was the practice of the Lehmann Optical Co. to order directly from Univis Lens Company in Dayton, Ohio, and not through the New York office. When the New York office of Univis Lens Company was being maintained, as prior to January 1, 1940, it was the custom of the Lehmann Optical Co. to order Univis Tint blanks and Univis "R" blanks from the New York office, but all other and standard requirements were purchased from Dayton. Except for this, I would say that the relationship between the Lehmann Optical Co. and the Univis Lens Company is unaltered.

I have read the above statement of two pages and swear such statement is true to the best of my knowledge and belief.

(S) WALTER E. LEHMANN.

Subscribed and sworn to before me this 17th day of December 1940:

(S) JOHN J. OLEAR, Jr.,  
John J. Olear, Jr.,

*Notary Public, N. Y. Co., No. 95, Reg. No. 1-0-97.*  
Commission Expires March 30, 1941.

63 In District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Affidavit of Irma Levin in opposition to motion.*

STATE OF NEW YORK,

*County of New York, ss:*

I, Irma Levin, am president of Robert Levin Inc., optical wholesaler located at 50 West 29th Street, in the Borough of Manhattan, City and State of New York, within the Southern District of New York.

Robert Levin Inc. has been a licensee of the Univis Lens Company Inc. ever since the licensing program of the Univis Company has been in effect, a period which I estimate to be approximately ten years. It is and generally has been the custom of Robert Levin Inc. during this period to order direct from the Univis Lens Company of Dayton, Ohio. Robert Levin Inc. is still a licensee of the Univis Lens Company Inc. and by the terms of its license is required to resell Univis lenses at minimum prices established by the Univis Lens Company Inc. and to resell such lenses only to retailers licensed by the Univis Lens Company Inc.

As president of Robert Levin Inc., I have made a personal check of the records of purchases made by this company from the Univis Lens Company Inc. for lens blanks during the period from January 1, 1940 to December 1, 1940 and hereby swear that 64 Robert Levin Inc spent a total of \$1,299.39 for Univis Lens blanks purchased during this period from Univis Lens Company. It has been and still is the custom of Robert Levin Inc. to make a monthly report to the Univis Lens Company of Dayton, Ohio, setting out the total number of Univis blanks sold by Robert Levin Inc. during the particular month and listing the customers (retailers) to whom these lens blanks were sold.

I know Mr. Milton Silverman whom I believe to be and have been representative of the Univis Lens Company in New York for many years.

Representatives of Robert Levin Inc. have during the past year received instructions from Mr. Virgil Hancock in the grinding of Univis lenses. This instruction was given at a meeting held in Manhattan at which Mr. Hancock was present. I believe Mr. Hancock to be and to have been a representative of the Univis Lens Company.

I have read the above statement of two pages and swear it is true to the best of my knowledge and belief.

(S) IRMA LEVIN.

Subscribed and sworn to before me this 26th day of December, 1940:

(S) JOHN J. OLEAR, Jr.,  
Notary Public.

[John J. Olear, Jr., Notary Public, N. Y. Co. No. 95, Reg. No. 1-0-97. Comm. expires Mar. 30, 1941.]

65 In District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Affidavit of Samuel Yeager in opposition to motion to vacate  
service of summons and to dismiss action*

STATE OF NEW YORK.

*County of New York, ss:*

I, Samuel Yeager, am President of the Unique Optical Company, engaged in the optical wholesale business at 19 West 34th Street, in the Borough of Manhattan, City of New York, State of New York. The Unique Optical Company has been a wholesaler licensed by the Univis Lens Company to sell and handle Univis lenses for about eight years.

By the terms of the license issued to the Unique Optical Company by the Univis Lens Company, the Unique Optical Company is required to resell Univis lenses at minimum prices fixed by the Univis Lens Company and to sell only to those retailers licensed by the Univis Lens Company.

The Unique Optical Company has customers located outside of the State of New York to whom it sells Univis lenses under the terms of its Univis license.

66 As an officer of the Unique Optical Company, I made a personal inspection of the orders placed by this company with the Univis Lens Company for lens blanks during the period from January 1, 1940 to November 30, 1940, which orders show that said Unique Optical Company, during this period, purchased a total of \$1,949.68 lens blanks from the Univis Lens Company.

The Univis Lens Company had an office in the Borough of Manhattan, City of New York, until about a year ago.

The salesman for the Univis Lens Company calls on the Unique Optical Company once every two or three months. This salesman has always been Milton Silverman.

Most of our orders and payments are sent directly to the Univis Lens Company at Dayton, Ohio.

The Univis Lens Company has on several occasions written the Unique Optical Company inquiring whether or not it considered that certain retailers were carrying on their business in an ethical manner.



I have read the above statement of two pages and swear it is true to the best of my knowledge and belief.

(S) SAMUEL YEAGER.

Subscribed and sworn to before me this 17th day of December 1940.

(S) SADIE FALK,  
Notary Public.

[Kings Co. Clk's No. 334, Reg. No. 1043. N. Y. Co. Clk's No. 197, Reg. No. 1F 122. Term expires March 30, 1941.]

67 In District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Affidavit of Maurice Friedlander in opposition to motion to vacate  
service of summons and to dismiss action*

STATE OF NEW YORK,  
County of New York, ss:

I, Maurice Friedlander, am President and Treasurer of Louis Friedlander, Inc., engaged in the optical wholesale business at 71 Nassau Street, in the Borough of Manhattan, City of New York, State of New York. I have been connected with this company since July 1939, at which time it was a wholesaler licensee of the Univis Lens Company and has continued to be such a licensee to the date of the making of this affidavit.

Louis Friedlander, Inc., is required by its license from the Univis Lens Company to sell Univis lenses at minimum prices fixed by said Univis Lens Company and to sell only to retailers licensed by the Univis Lens Company.

Louis Friedlander, Inc., sells Univis lenses both in the State of New York and outside the State of New York.

68 On examining the files of Louis Friedlander, Inc., I saw a letter from the Univis Corporation, dated September 20, 1940, which stated:

"With regard to the franchise application for M. J. Dworin, O. D., 804 Flatbush Ave., Brooklyn, as you know, it is our custom to refer applications to Mr. Milton Silverman for report. He will be away from New York for several weeks."

Thereafter, on October 14, 1940, Louis Friedlander, Inc., received a further communication from the Univis Corporation, stating that action on the application of M. J. Dworin.

"will be deferred until Mr. Milton Silverman sees him on his return to New York about the end of the month."

Further, Louis Friedlander, Inc., received a letter from the Univis Corporation, dated August 8, 1940, containing the following language:

"We have received the franchise application you sent for Samuel Leibert, Optician, 132 N. Main St., Portchester, N. Y., and are making the customary reference to Mr. M. T. Silverman for report.

"On receipt of Mr. Silverman's report we will advise you regarding disposition of the application."

Further, Louis Friedlander, Inc., received a letter dated November 4, 1940, from the Univis Corporation, containing the following language:

"This is to acknowledge franchise application for Louis P. Noshier, Optician, Irvington, N. J. We are referring to Mr. Milton Silverman for report, and will advise you as soon as feasible regarding disposition."

Further, Louis Friedlander, Inc., received a letter dated November 7, 1940, from the Univis Corporation, containing the following language:

"According to our custom, we are referring to Mr. Milton Silverman the franchise application you submitted for George Fyfe, Freeport, N. Y. You will be advised regarding disposition as soon as feasible."

As an officer of Louis Friedlander, Inc., I made a personal check of the orders placed by this company with the Univis Lens Company for lens blanks during the period from Jan. 1, 1940, to Nov. 30, 1940, and hereby swear that Louis Friedlander, Inc., during this period purchased a total of 1,025 pairs of lens blanks, at a total cost of \$3,754.91, from said Univis Lens Company.

It had been the custom of Louis Friedlander, Inc., to make a report monthly to the Univis Lens Company, setting out the total number of Univis lens blanks sold by Louis Friedlander, Inc., during said month and listing the customers to whom these lens blanks were sold.

In the file of Louis Friedlander, Inc., there is a letter dated December 4, 1939, from the Univis Lens Company notifying me that said Univis Lens Company would close its New York office on December 6, 1939.

Louis Friedlander, Inc., purchase their lenses direct from the Univis Lens Company in Ohio. Milton Silverman, a representative of the Univis Lens Company, calls on Louis Friedlander, Inc.,

from time to time—perhaps once a month, perhaps less frequently. Since I have been with Louis Friedlander, Inc., Mr. Virgil Hancock, a representative of the Univis Lens Company, called on Louis Friedlander, Inc., in the company of Milton Silverman.

I have read the above statement of three pages and swear it is true to the best of my knowledge and belief.

.(S) MAURICE FRIEDLANDER.

Subscribed and sworn to before me this 18th day of December 1940.

(S) MARY MERVISH,  
Notary Public.

[Mary Mervish, Notary Public. Kings Co. Clk's No. 486, Reg. No. 1079. New York Co. Clk's No. 129, Reg. No. —. Commission expires March 30, 1941.]

70 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Affidavit of Rose Weiss in opposition to motion to vacate service of summons and to dismiss action*

STATE OF NEW YORK,  
County of New York, ss:

I, Rose Weiss, am the buyer for Potter & Schnackenberg, who are engaged in the optical wholesale business at 20 West 47th Street, in the Borough of Manhattan, City of New York, State of New York. I have been employed by this company for twenty years.

To the best of my recollection, Potter & Schnackenberg have had a Univis license for about ten years. By the terms of this license Potter & Schnackenberg are required to resell Univis lenses at minimum prices established by the Univis Lens Company and only to retailers licensed by the Univis Lens Company.

I have made a personal examination of the records of Potter & Schnackenberg, which records disclose that this company purchased a total of 3,194 pairs of lens blanks from the Univis Lens Company at a total cost of \$11,559.22, from the 1st of January 1940 through November 30, 1940.

71 Potter & Schnackenberg resell Univis lenses to customers both within the State of New York and outside the State of New York.

Most of the orders of Potter & Schnackenberg are placed with the Univis Lens Company direct, but some of them are placed with Mr. Milton Silverman, a salesman of Univis Lens Company.

Mr. Silverman calls on Potter & Schnackenberg about once every two months. Beside Mr. Silverman, Mr. Virgin Hancock, of the Univis Lens Company, has called on Potter & Schnackenberg. About two years ago Mr. Hancock called on Potter & Schnackenberg to give any desired instruction on the grinding of the "slab-off" bifocal.

I have read the above statement of two pages and swear it is true to the best of my knowledge and belief.

(S) ROSE WEISS.

Subscribed and sworn to before me this 12th day of December 1940.

(S) JOHN J. OLEAR, JR.,  
Notary Public.

[John J. Olear, Jr., Notary Public, N. Y. Co. No. 95, Reg. No. 1-0-97. Commission Expires March 30, 1941.]

72 In District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Affidavit of Jack R. Silverman in opposition to motion*

STATE OF OHIO,

County of Montgomery, ss:

Jack R. Silverman, being first duly sworn according to law, makes oath and states as follows:

I am the President of The Univis Lens Company, Inc., one of the defendants in the above entitled cause, and as such am familiar with the extent of the business done by The Univis Lens Company, Inc., in the manufacture and sale of blanks and lenses as shown by the books of said Company, during the period of the three years of 1938, 1939, and 1940, inclusive.

I further state that during said period of time the proportion of business done by The Univis Lens Company, Inc., with whole-  
73 sale distributor licensees in the city of New York and adjacent territory to the total business done with all wholesale distributor licensees is only approximately 0.06%, and the proportion of business with direct retail licensees in the city of New York and adjacent territory to the total business done with all direct retail licensees is only approximately 0.04%. Below is given the unit sales and total dollar volume thereof during said three-year period to all distributor licensees and all direct fac-

tory retail licensees and to all New York City distributor licensees and New York City direct factory retail licensees:

Year	Total unit sales to all distributor licensees	Total dollar volume to all distributor licensees
	<i>Pairs</i>	
1938.....	145,479	\$529,176.50
1939.....	171,633	620,715.50
1940.....	197,919	712,716.50

Year	Total unit sales to all direct factory retail licensees	Total dollar volume to all direct factory retail licensees
	<i>Pairs</i>	
1938.....	58,856	\$144,585.00
1939.....	44,085	175,318.00
1940.....	47,542	188,282.00

Year	Total unit sales to New York City distributor licensees	Total dollar volume to New York City distributor licensees
	<i>Pairs</i>	
1938.....	9,553	\$34,487.00
1939.....	10,855	37,994.00
1940.....	11,932	41,762.00

Year	Total unit sales to New York City direct factory retail licensees	Total dollar volume to New York City direct factory retail licensees
	<i>Pairs</i>	
1938.....	1,951	\$6,630.00
1939.....	1,747	6,114.00
1940.....	1,727	6,046.00

I further state that The Univis Lens Company Inc. supplies throughout the United States approximately One Hundred Eighty (180) wholesale distributor licensees exclusive of branch offices of these wholesale distributor licensees, of which number only fourteen (14) are located in the city of New York or adjacent territory. There is given below a list of these wholesale distributor licensees located in the city of New York or adjacent territory.

Charles E. Carlson, Inc.  
Arthur Frank & Company.  
Louis Friedlander, Inc.



Louis Gold Optical, Inc.  
 Joseph Greiff, Inc.  
 Hygrade Optical Company, Inc.  
 L. H. Kash & Company.  
 Lehmann Optical Company, Inc.  
 Robert Levin, Inc.  
 August Neuse & Company.  
 North Star Optical Company.  
 Potter & Schnackenberg.  
 Unique Optical Company, Inc.  
 Max Zadek, Inc.

I further state that The Univis Lens Company, Inc. supplies approximately One Hundred (100) direct factory retail licensees throughout the United States and of this number only one (1) is located in New York City.

I further state that the Univis Lens Company, Inc. and The Univis Corporation maintain no payroll in and have no employee or officer resident in the city of New York or the Southern District of New York, all sales or licenses obtained in said city or District being made only by soliciting salesmen sent into said city or District who are paid direct from the home office of The Univis Lens Company, Inc. or The Univis Corporation.

The above affidavit is voluntarily given in response to the request for the information contained therein by counsel for the plaintiff in the above entitled action.

Dated this 6th day of January 1941.

(Sgd.) JACK R. SILVERMAN.

Sworn to and subscribed before me this 6th day of January, 1941.

(Sgd.) RUBY M. ECK,  
*Notary Public.*

[Ruby M. Eck, Notary Public, in and for Montgomery County, Ohio. My commission expires Jan. 21, 1941.]

76 In United States District Court, Southern District of  
New York

Civ. 10-392

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS COMPANY, INC., ET AL., DEFENDANTS

*Memorandum opinion*

COXE, D. J.: It is clear from the affidavits submitted on this motion that the corporate defendants are "transacting business" in the Southern District; that is all that is required to sustain the venue here under Section 12 of the Clayton Act (15 U. S. C. A. 22). Eastman Co. v. Southern Photo Co., 273 U. S. 359; Hansen Packing Company v. Armour Co., 16 F. Supp. 784; Sure-Fit Products Co. v. Fry Products, Inc., 23 F. Supp. 610. The motion of the defendants to quash the service is denied. February 3, 1941.

(Sgd.) ALFRED C. COXE,  
U. S. D. J.

77 In United States District Court

[Title omitted.]

*Order denying motion to vacate and to quash service*

February 11, 1941

The United States Government, having commenced this action on September 16, 1940, by filing a complaint in this District against the defendants The Univis Lens Company, Inc.; The Univis Corporation; Jack R. Silverman; Meyer H. Stanley; G. E. Stanley; N. M. Stanley; and a summons having issued against each of the defendants and having been duly served on the defendants, both corporate and individual, at their place of business, in Dayton, Ohio, by the United States Marshal, on October 10, 1940; and the returns having been duly made and filed on October 23, 1940; and the defendants having appeared specially and having filed a Motion to Vacate and Quash Service duly supported by affidavits and brief of counsel, on November 26, 1940; and the Government having filed in reply a brief and affidavits on January 9, 1941; and the Motion having come on to

be heard by oral argument on January 10, 1941; and the defendants having appeared and having been heard by Colonel Rowan A. Greer, and the Government having appeared and been heard by Samuel S. Isseks, through Stanley E. Disney; and the defendants having filed a supplementary brief with permission of the Court on January 20, 1941; and the Court having duly considered the papers filed and the arguments made in this cause, and having duly rendered a memorandum opinion denying the Motion of the defendants, on February 3, 1941, it is

Ordered that the defendants' Motion to Vacate and Quash Service of summons is hereby denied, and it is further

Ordered that the defendants named in this action are hereby directed to file their answers to this cause within twenty days of the entry of this order.

(S) COXE,

*United States District Judge.*

79 In United States District Court, Southern District of New York

[Title omitted.]

*Notice of settlement*

SIR: Please take notice that the within Order will be presented for settlement and signature to the Honorable Alfred C. Coxe, United States District Judge, at the office of the Clerk, Room 601, United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 11th day of February, 1941 at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated New York, February 7, 1941.

(S) SAMUEL S. ISSEKS,

*Special Assistant to the Attorney General.*

TO FREDERICK S. DUNCAN,

*230 Park Avenue, New York, N. Y.*

80 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Answer*

Filed Feb. 28, 1941

Now come the defendants, each for itself or himself, both severally and jointly, and answer the Complaint filed herein as follows:

## HISTORY OF THE BUSINESS

1. Defendants aver that The Univis Lens Company, Inc., was originally formed for the purpose of selling the type "B" lens under the Watson & Culver Patent No. 1,632,208 in the United States and Canada; and that the ownership of said patent was in the United Kingdom Optical Company, Ltd., of Mill Hill, London, where all the manufacturing of said blanks for said lenses took place. The Univis Lens Company, Inc., was then and 81 still is substantially owned by the individual defendants herein. On or about March 14, 1931, The Univis Lens Company, Inc., created The Univis Corporation under the laws of the State of Delaware, in which it became the majority stockholder and transferred to it the patents that it then owned or controlled. Other patents were later developed and acquired by The Univis Corporation. This Corporation was formed for the purpose of acquiring certain exclusive distribution rights in the sale of Univis lenses which had been acquired by others who had initially aided The Univis Lens Company, Inc., in merchandising its product in the United States. The purpose of this acquisition was to eliminate this restriction on merchandising of these lenses and blanks nationally and freely to any qualified distributor and retailer throughout the United States and to promote an "open end" license system available to all competent and qualified licensees, particularly in the United States. The Univis Corporation thereafter licensed The Univis Lens Company, Inc., and other blank manufacturers as manufacturing licensees under these and subsequently acquired Letters Patent.

2. Defendants further aver that The Univis Corporation thereafter collected royalties for its services in licensing and promoting the sale of Univis lenses and in paying the allied expenses in connection with the development, research, engineering, and acquisition of patents on additional inventions in bifocal eye- 82 glass lenses and the protection of the rights thereunder by litigation, with the result its patents have been sustained as valid and infringed by several United States Courts as shown by the attached Exhibits A and B.

3. The defendants aver that The Univis Corporation further licensed the Sharon Company to manufacture Univis blanks on condition that they be supplied to the licensed wholesalers and retailers of The Univis Corporation. This arrangement was cancelled on or about December 5, 1934, due to the fact that the manufacturing of the Sharon Company was not satisfactory to The Univis Corporation as to its requirements in the maintenance of quality, and The Univis Corporation was then left with The Univis Lens Company, Inc., as its sole manufacturing licensee

capable of making and finishing the blanks and lenses of first quality only.

4. The defendants aver that on or about September 25, 1935, The Univis Products Manufacturing Company was created for the purpose of manufacturing lenses in the United States in order to remove the manufacturing primarily from England with a view to bringing this business to the United States. On or about May 31, 1940, it was found unnecessary to continue this company and it was dissolved because of the fact that the manufacturing facilities of The Univis Lens Company, Inc., had grown to such proportions as to be able to supply industry completely from the manufacturing operations in this country.

The Univis Lens Company, Inc., owns the majority stock of The Univis Corporation and for all intents and purposes, The Univis Lens Company, Inc., and The Univis Corporation are the same, and the individual defendants have owned or controlled both corporations continuously from the beginning of their respective operations.

#### LICENSE POLICY AND MANUFACTURING CONDITIONS

5. The Univis Corporation avers it has consistently followed the same license policy from the beginning of its operations, i. e., an "open end" license policy by which all licensees of the same class are charged the same license fee, have the same prices fixed for performing the same manufacturing service, and the licenses are open to all qualified licensees. In accordance with this policy, The Univis Corporation has consistently expanded and increased the number of its licensees under this licensing system. Beginning in 1931 it had 1,597 retail licensees; in 1932, 3,066; in 1933, 3,673; in 1934, 4,163; in 1935, 4,528; in 1936, 5,218; in 1938, 5,629; in 1939, 5,850; in 1940, 6,635; and through February 17, in 1941, 6,488. On January 1, 1940 the number of wholesale distributor licensees was 329 and this number was increased to 331 through February 17 of 1941.

6. The Univis Corporation further avers that the basis of its license policy is the maintenance of highest maintainable standards of quality, service, and performance by each licensee at each stage of the manufacturing by the licensee, and so far as it knows only first class products have been sold at each stage of manufacture. This license policy is founded upon the peculiar nature of the business of manufacturing, prescribing, fitting, and distributing eyeglass lenses. This business requires the manufacture of eyeglass lenses by a series of successive steps by different types of manufacturing establishments at different distances from the customer: in the first place, the "blanks"



must be manufactured out of blocks of glass in which the near vision inserts are fused to form the semifabricated product from which the bifocal lenses are ultimately to be made. In the case of the Univis lens "blanks," this requires a forty-four hour process from raw glass to the semifinished blank in order to produce first class lens "blanks" of first quality only, and all blanks not up to such standards are discarded. The Univis Corporation and The Univis Lens Company, Inc., aver that so far as they know, The Univis Lens Company, Inc., is the only optical lens manufacturer that has never knowingly sold a substandard quality blank and has consistently sold only first quality blanks; and that The Univis Lens Company, Inc., by a rigid inspection system rejects all sub-quality blanks. As a result of this rigid inspection system, approximately 40% of all blanks started through The Univis Lens Company, Inc., factory are discarded as not saleable for lenses under the standard of quality of The Univis Lens Company, Inc. The defendants aver that this completed lens blank is not useful as an eyeglass lens until it has been further

85 manufactured by other licensees and finally fitted to the eyes of the wearer through a suitable examination of the eyes and the manufacturing of the lens by grinding the "blank" to the prescription of the doctor prescribing the correction necessary in the bifocal eyeglass lens. The retailer licensee who is in direct contact with the customer must take the manufacturing steps of fitting of the lenses in accordance with the prescription of the lens, whether prescribed by him or by a doctor; must additionally determine the shape of the lens, the centering of the lens, the positioning of the lens on the face of the wearer, and the mounting of the lens in the frame in order to give the maximum vision and comfort to the wearer. And thereafter the prescription for grinding is forwarded to a wholesaler to whom the "blank" has been sold by

9 The Univis Lens Company, Inc. This wholesaler then grinds to the instructions and prescriptions delivered to him by the retailer, the lenses are in turn then delivered to the finishing retailer who adjusts them and fits them to the eyes of the wearer and corrects them to the exact requirements, personal habits, and eyes of the wearer. Thereafter this retailer services these lenses by adjusting them, fitting them and maintains them in proper operating condition without further compensation, for a period of from two to four years. Both the wholesaler and retailer must maintain skilled personnel, specially trained in this field, machinery and equipment and experts to operate such equipment. The de-

86 fendants herein aver that this "stage" manufacturing by which eyeglasses are made first in blanks by a blank manufacturer, then ground by a wholesale grinder and then fitted and

adjusted to the eyes of the wearer by the retailer, require manufacturing steps to be performed at each stage of the process of manufacturing the ultimate eyeglass lens for the particular wearer. Such successive stages of manufacture each have to be carefully controlled by the licensor, The Univis Corporation, in order to ensure the maintenance of quality at each stage of manufacture so that the ultimate lens will be satisfactory to the wearer and will be maintained in that satisfactory condition over a period of years.

7. The defendants further aver that the Univis lens is the only lens that gives the ease of single vision with a bifocal eyeglass lens; they aver that this is a result of extensive research, developments, engineering and investment in equipment and skilled personnel for the purpose of producing such a lens; and these methods of manufacture and articles of manufacture are adequately protected by numerous patents which evidence the result of this extensive research. The defendants further aver that unless bifocal eyeglass lenses are correctly manufactured in each successive stage, they are subject to the many defects which prevent said lenses from being of a first grade quality or from rendering to the user safe and satisfactory results in the care and preservation of the eye and best vision as well as the general health and physical fitness of the user.

87 These defects cannot be seen by anyone except an expert and the public is not aware of the defective lenses until either physical illness or injury to the eyes ultimately results. The defendants aver that according to the system of license control under Letters Patent and trade-mark rights, at each state of manufacture, the maintenance of price on each manufactured article as sold by each licensee and by a control of the licensees as to quality, equipment and personnel, they have been able to build an extensive business in the field of eyeglass lenses for the benefit of themselves and the public because of the maintenance of such standards of quality. The defendants further aver that they have spent approximately 200,000 dollars in research and engineering and in the constant distribution of technical information based upon this research and service to the licensees and customers of the defendants herein.

In order to properly understand the reasons behind the Univis uniform resale price and distribution policy it is well to have a clear picture of the optical business structure as it exists today. Distribution of lenses, and, more particularly bifocals, is made through the medium of wholesale prescription houses, large retail dispensing and optometrical establishments maintaining their own grinding plants, and optometrists, ophthalmologists and dispensing opticians who do not do the actual grinding. The whole-

88 sale group is made up of prescription houses maintaining the very finest skilled personnel, equipment, and other facilities for completing prescriptions to the highest degree of accuracy, as well as another group who have neither equipment, personnel, financial stability, or the integrity necessary to carry on a quality business. In the case of the first group, they are constantly planning and supporting educational programs that tend to improve the standards of quality used by the retail practitioner with the idea of rendering the maximum efficiency of visual aids to the spectacle wearing public.

The optometric profession also contains two specific types of operators. In the one case the professional man who attends extension courses, purchasing the finest type of refracting equipment and using only the best quality lenses obtainable in order to render the highest possible service to his patients. Then there is the other group, termed the commercial optometrist, who outwardly may have the reputation of selling glasses at lower prices, but who in reality secures higher prices than those of the first group. These higher prices are obtained usually for a cheaper quality of merchandise purchased at lower prices. Within the optical industry there are three qualities of lenses sold, and none of these qualities are identified to the purchasing public. These are 1st quality, 2nd quality, and commercial quality, the latter two representing lenses that have manufacturing defects and that do not come up to the standard of quality established for first quality

89 lenses. The Univis Lens Company, Inc., is the only optical lens manufacturer that has never knowingly sold a substandard quality lens, and every lens that does not measure up to the most rigid inspection is used only for samples or otherwise destroyed.

The wholesaler, or the first man to purchase the manufactured product pays generally \$3.25 for what is known as the rough Univis blank. These blanks are the finished product of the Univis Lens Company, Inc.'s factory, having had the reading segment fabricated and produced to an exact reading addition. The wholesaler receives a prescription from either an optometrist, dispenser, or ophthalmologist and proceeds to finish a pair of Univis blanks to the desired Rx and then cut, edge, and mount it into a frame or mounting. This process entails great accuracy and requires from  $3\frac{1}{2}$  to 4 hours for each pair of lenses. There is also included the matter of spoilage and breakage during the processing, which is a matter of about 3% of all lenses handled by the wholesaler. For this job the wholesaler receives an average gross profit of approximately \$3.70 for a pair of lenses. The lenses are then ready to deliver to the optometrist, ophthalmologist, or dispenser who in turn must properly fit and adjust the lenses to the patient's

face. It is averred that in this connection the finest pair of lenses improperly adjusted or with the visual measurements inaccurate would render a poorer service than a cheap pair of lenses correctly fitted. This accounts for the careful selection by

90 The Univis Corporation of retail licensees capable of doing an accurate fitting and adjustment in order to insure maximum performance and satisfactory performance to the public purchasing Univis because this is the final vital step in the manufacturing process. The total average margin of gross profit for the retailer is about \$9.00 per pair of lenses. This licensee has the responsibility for a correct refraction; if a mistake is made in the refraction the retailer must produce another pair of lenses at no charge and when this occurs it means that the retailer is operating at a substantial loss. The defendants aver on information and belief, that the average wholesale price for lenses charged by manufacturers where the lens is unprotected by patent rights with no control of the price is \$2.25 per pair, for which the retailer charges his customer from \$12.00 to \$14.00 per pair, and the average wholesale price by other manufacturers than the defendants for bifocal lenses that are patented or controlled is \$5.75 for which the average retail price is \$16.00 per pair. The average wholesale price for the Univis first quality patented lens is \$7.00 with the retailer's charge of \$16.00 per pair. The Univis retail licensee, therefore, under the license system of The Univis Corporation makes a smaller margin of profit on Univis lenses, but supplies a finer quality of lens that renders a greater service to the public than is the case with other bifocal lenses.

91 The normal length of usage of a pair of bifocals, that is, the time elapsing between the original purchase and the next examination and purchase of another pair of lenses, is from three to four years. During all this time the retailer will adjust, do slight repairs, tighten, furnish spectacle cases, cleaning cloths, and other services for which he receives absolutely nothing.

8. The defendants herein aver that the individual defendants have no personal activities in connection with the subject matter of this Complaint: that all of their activities are only in their official capacities as is averred in paragraph 5 of the Complaint.

9. Defendants herein aver that the public is adequately supplied with Univis eyeglass lenses through the system of licensing and distribution in effect as conducted by The Univis Corporation and The Univis Lens Company, Inc. The defendants aver that no one has ever been refused eyeglasses of the Univis bifocal type or gone without those lenses due to the fact that The Univis Lens Company, Inc., and The Univis Corporation have not provided adequate facilities and licensees, for the manufacture and supply of such lenses. The defendants aver that no qualified licensee has



ever been refused a license by The Univis Corporation or had its license revoked or cancelled. The defendants herein aver that according to their information and belief no customer of any licensee has ever been supplied with a second quality or third quality lens and that every precaution has been taken  
 92 that is humanly possible, to supply only first quality lenses.

Defendants aver that only with this system, such as they employ by way of license and control of their licensees, as well as the system of manufacturing they employ, is this possible; and they aver on information and belief that The Univis Lens Company, Inc., is the only company supplying blanks only of first quality.

SPECIFICALLY ANSWERING THE COMPLAINT

10. Answering paragraph 1, the defendants, jointly and severally, deny any violations of Sections 1 and 3 of the Sherman Antitrust Act; and deny that this Complaint is properly filed and these proceedings are properly instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended.

11. Answering paragraph 2, the defendants herein, jointly and severally, deny any unlawful acts and violations of any law by any of them, jointly or severally; and they particularly deny any unlawful acts and violations described in the Complaint, and deny  
 93 any contracts, combinations or conspiracy to restrain trade and commerce among the several States of the United States and between the several States and the District of Columbia, and in the District of Columbia, have been and are carried out in part and made effective within the Southern District of New York or elsewhere; and deny that any of many of the said unlawful acts alleged to have been done in pursuance thereof have been  
 performed, or are being performed by the defendants  
 —within said District. The defendants, each and severally, deny that any acts by any one of them, jointly or severally, have been unlawful whether within said District or outside of it. The defendant, The Univis Lens Company, Inc., admits it has manufactured and now manufactures at Dayton, Ohio, bifocal eyeglass lens "blanks" under Letters Patent of the United States, but denies that its acts have been pursuant to any unlawful combination or conspiracy. The Univis Lens Company, Inc., admits that it has sold, ships, and delivers bifocal eyeglass lens "blanks" in interstate trade and commerce to customers living within the Southern District of New York and within the several States of the United States, but these deliveries are made and completed outside of said District; and admits that it has solicited business and orders for the purchase of said bifocal lens "blanks". The Univis Corporation admits that it has licensed under Letters Patent and



trade-mark rights owned and controlled by it certain wholesalers and retailers within the Southern District of New York and elsewhere to continue the manufacture and complete the sale of bifocal lenses as already partly manufactured by The Univis Lens Company, Inc., its licensee; and The Univis Corporation admits that it has issued and distributed price lists quoting prices, but denies that the issuance thereof resulted from any combination or conspiracy for the resale of bifocal lenses within said District. It avers to the contrary that until the manufacture of the products

under its patents and trade-marks is completed and delivered to the ultimate wearer of the lenses there is no such

94 thing as a bifocal lens, it being averred that its licensee manufacturer, The Univis Lens Company, Inc., makes a "blank" which is useless as a bifocal eyeglass lens in itself and without further manufacturing and processing. This "blank" is then sold to a wholesale grinder or retailer grinder and fitter. Its wholesaler grinder and refailer grinder or fitter each must perform various manufacturing acts upon said "blanks" before it becomes a finished article of manufacture only adaptable to the particular user for whom it has been especially made in its final form by the final seller of the lens; and avers that said sale of the completed lens is the first and only sale of it. The Univis Corporation denies that the majority of its wholesalers or any of them, including its wholesalers located within the Southern District of New York, sell, ship, and deliver bifocal eyeglass lenses in interstate trade and commerce at prices under terms agreed on under any combination or conspiracy; but avers to the contrary that all prices as established by it are without reference to any other person, firm or corporation, and are based upon costs ascertained by it of labor, material, and overhead and fixed by it without reference to any other person, firm, or corporation so as to enable its licensees to conduct their manufacturing, selling and services on these "blanks" and lenses at a price that is reasonable to the public

95 while at the same time returning to such licensee its out-of-pocket expenses, plus a reasonable profit to enable it to continue in business and maintain machinery, personnel and management competent to manufacture and sell the products involved.

12. Answering paragraph 3, The Univis Lens Company, Inc., admits its corporate capacity as averred. The Univis Lens Company, Inc., avers that it owns the controlling stock of The Univis Corporation. The defendant, The Univis Lens Company, Inc., admits that it manufactures bifocal "blanks" which embody one or more of the patents and the claimed subject matter of the patents under which it is licensed by The Univis Corporation but The Univis Lens Company, Inc., denies that it sells, ships, and

delivers bifocal lenses in interstate commerce in the United States and the District of Columbia except in rare instances, its principal and almost exclusive business being in the field of manufacturing, selling, shipping, and delivering "blanks" upon which further manufacturing work has to be done by other manufacturers under the claims of one or more of said patents, before complete lenses are ready for the ultimate wearer.

13. Answering paragraph 4, The Univis Corporation admits its corporate capacity as averred therein, and the fact that it occupies the same offices and building as The Univis Lens Company, Inc., and avers that it is wholly controlled by The Univis Lens Company, Inc., at this time and for some time past prior to the bringing of this Bill of Complaint. The Univis Corporation admits that it owns or controls various patents under the claims of 90 which it licenses as manufacturers to do further manufacturing in the several States of the United States and in the Southern District of New York and the District of Columbia, in order to complete finally as eyeglass bifocal lenses the rough "blanks" manufactured by the defendant The Univis Lens Company, Inc., which in the condition of rough "blanks" cannot be used for any lens purpose.

14. Answering paragraph 5, The Univis Lens Company, Inc., and The Univis Corporation, and the individual defendants herein, admit that they occupy the position in the two corporations as indicated in said paragraph, and admit that said individual defendants have participated and now participate in the direction and management of said corporations, but deny they have done any acts which constitute any offense as charged in this Bill of Complaint, and the defendants aver that as a matter of law the fact that these two defendant corporations are owned by the same body of individual stockholders and the fact that the parent corporation with its subsidiary corporation in the sale of the products of the parent company does not create a condition of monopoly or conspiracy repugnant to the provisions of the Antitrust laws of the United States.

15. Answering paragraph 6, the defendants leave the plaintiff to its proof of the averments therein.

16. Answering paragraph 7, the defendants leave the plaintiff to its proof of the averments therein.

97 17. Answering paragraph 8, the defendants leave the plaintiff to its proof of the averments therein.

18. Answering paragraph 9, the defendants aver that the statements therein are inaccurate and are therefore denied in that the patents owned by The Univis Corporation cover eyeglasses other than bifocal eyeglass lenses, and in that The Univis Lens Company, Inc., manufacturers eyeglass lens "blanks" other than bifocal eye-

glass lens "blanks"; and The Univis Corporation avers that it owns or controls the following patents and trade-marks which constitute the complete list of its industrial property:

U. S. Letters Patent No. Re. 19,142.

U. S. Letters Patent No. 1,632,208.

U. S. Letters Patent No. 1,729,654.

U. S. Letters Patent No. 1,822,606.

U. S. Letters Patent No. 1,645,940.

U. S. Letters Patent No. 1,868,863.

U. S. Letters Patent No. 1,876,497.

U. S. Letters Patent No. 1,879,769.

U. S. Letters Patent No. 1,886,649.

U. S. Letters Patent No. 1,899,777.

U. S. Letters Patent No. 1,906,672.

U. S. Letters Patent No. 1,912,165.

U. S. Letters Patent No. 1,924,336.

U. S. Letters Patent No. 1,932,100.

U. S. Letters Patent No. 1,949,698.

U. S. Letters Patent No. 1,949,699.

U. S. Letters Patent No. 1,958,729.

U. S. Letters Patent No. 1,971,394.

U. S. Letters Patent No. 1,981,815.

U. S. Letters Patent No. 1,996,442.

U. S. Letters Patent No. 2,015,007.

U. S. Letters Patent No. 2,016,134.

U. S. Letters Patent No. 2,025,892.

U. S. Letters Patent No. 2,025,893.

U. S. Letters Patent No. 2,030,968.

U. S. Letters Patent No. 2,033,573.

U. S. Letters Patent No. 2,151,573.

U. S. Letters Patent No. 2,183,885.

Trade-Mark Registration No. 235,817, "Univis."

Trade-Mark Registration No. 250,138, "Universal Visibility."

98 19. Answering paragraph 10, the averments thereof are admitted.

20. Answering paragraph 11, the defendants admit the statement in the first sentence of said paragraph and admit the date of the organization of The Univis Corporation, but deny that their acts were other than those necessary and proper to the legitimate enjoyment of the rights granted by the patent, copyright, and trade-mark laws of the United States for the enjoyment of the patents, trade-marks, and copyrights owned by The Univis Corporation, and for the further reason in order to control the quality of manufacturing by the licensees of The Univis Corporation under said patents, trade-marks, and copyrights due to the fact

that the subject matter must be manufactured in stages corresponding to the stages of distribution, it was necessary to have a series of stage licenses with a strict control of each manufacturing operation of each licensee and the price of each manufactured product at each stage of manufacture in order to regulate and control the quality of the ultimate product as applied and supplied to the wearer. It is further averred by The Univis Corporation that the health and eyesight of the wearer of bifocal lenses depends upon the quality of such lenses and the quality of the lenses in turn depends upon a strict control of each stage of manufacture of the product that is ultimately the eyeglass lens; and that because of the peculiar requirements of this type of mechanism by

99 which it is impossible to manufacture it complete in any one plant, as the eyeglass lens must be adapted to one person only, it is necessary to manufacture the product first in a lens "blank" plant where the blanks are manufactured in quantity to reduce costs to a reasonable figure; and thereafter the successive manufacturing progress by stages by wholesaler grinders and retailer grinders or fitters to complete the manufacturing of the eyeglass lenses by altering the blanks and fitting them subsequently as finished lenses ground to the particular prescription of the wearer of the lens. It is averred that under such circumstances it is necessary as a part of the right of an owner of a patent and trade-mark to control the price of the manufactured article at each stage of its manufacture in which respective stages it holds individual patents and claims of patents in order that the ultimate finished product shall be delivered to the wearer to insure its quality and the rights of the patentee to protect its interest in the patent by protecting the quality of the successive products that finally become a completed lens.

21. Answering paragraph 12, the defendants admit the averments therein.

22. Answering paragraph 13, the defendants admit the averments therein.

23. Answering paragraph 14, the defendants admit the averments therein.

24. Answering paragraph 15, the defendants deny the allegations thereof; and aver to the contrary that there has been  
100 no combination or conspiracy to restrain interstate trade and commerce in bifocal lenses either as set forth in this paragraph or elsewhere in this Complaint; and aver that the selection of wholesalers and retailers has been solely on the basis of the ability and skill of such wholesalers and retailers to manufacture, adjust, and fit bifocal eyeglass lenses to the wearers in order to insure the quality of the lenses so licensed, and deny that



this selection has been according to arbitrary rules and regulations; and aver that The Univis Corporation has gone to great trouble and expense in ascertaining the facts as to those whom it licensed and in maintaining a licensee list adequate in number and quality to serve in each and every community in which the bifocal eyeglass lenses in question are sold; and further aver that it has been within its legal rights in declining to license those with whom it does not care to deal; and that, as a matter of law, the reasons therefor are wholly immaterial and the refusal to license or the cancellation of a license are within the rights of the patentee or the owner of the patent; and, as a matter of law, the defendants have a right to deal or refuse to deal with any person, firm, or corporation for any reason that recommends itself to the defendant.

The defendants herein further aver that there has been no contracting, combining, or conspiring between them to do the acts set forth in paragraph 15 and particularly subparagraphs (a), (b), (c), and (d); but to the contrary, they aver that said prices are reasonable, are fixed with due relationship to costs and a  
101 reasonable profit for their licensees to enable the licensees to maintain organizations to serve the public satisfactorily; but the defendants admit that the prices are uniform to everybody and aver that no discrimination is practiced by the defendants or any of them, either on prices or in the selection by The Univis Corporation of its licensees because to practice such discrimination would be contrary to law.

Further answering paragraph 15, the defendants aver that The Univis Corporation, through its licensees, license for manufacture and sale, a small fraction of the total number and value of bifocal eyeglass lenses made and sold throughout the United States, it being averred upon information and belief, that the percent thereof is less than four percent of the total number or value of bifocal eyeglass lenses manufactured in the United States, and aver therefore, there has not been and could be no restraint of trade or competition, reasonable or unreasonable, by any of the defendants, jointly or individually, because the subject matter hereof is of such small amount as compared with the total business in the United States that it has no effect upon the business of bifocal eyeglass lens manufacture and sale in the United States.

25. Answering paragraph 16, the defendants individually and jointly, deny the allegations of this paragraph; and aver to the contrary that the licenses of The Univis Corporation have been granted without restriction throughout the existence of said licensing system; the number now outstanding through February



17, 1941 being 6,488 retail licenses and 331 wholesale distributor licenses, which number is being constantly added to as prospective licensees apply for licenses and they are granted; that

102 The Univis Corporation and The Univis Lens Company, Inc., have every inducement to extend these licenses as extensively as possible to the greatest number of persons, firms, and corporations because it insures the royalties increase to The Univis Corporation and sales of "blanks" by The Univis Lens Company, Inc., likewise increase; and The Univis Corporation has conducted its license system as an "open end" license system without restriction as to number of licenses so long as the licensees comply with the reasonable requirements of the licensor as to the quality and service to the customers and the maintenance of an establishment with competent work people and adequate machinery for this purpose because otherwise the value of the patents and the bifocal eyeglass lens license thereunder would be destroyed by poor quality of licensees or poor service to the public; and aver that the patents have been used for such lawful purposes only and no other; and aver they have controlled the price of the patented products sold at each stage of manufacture only for the purpose of insuring the value of the patents to the licensor and the rights of the public to first quality lenses by maintaining the quality through requiring the licensees to secure reasonable and adequate prices for the manufactured products at each stage of manufacture in order to maintain skilled organizations to do the work on the eyeglass lenses for the benefit of the public and owner of the patents.

The defendants further aver that a full and thorough investigation of all of the licenses and methods of doing business of  
103 the defendants herein were inquired into by the United States Department of Justice, extending over a period of many months, commencing in the first part of the year 1933 and terminating approximately the latter part of said year of 1933, and that as a result thereof, no objection was raised by the United States Department of Justice to the methods of doing business complained of herein until a few months before the bringing of this Bill of Complaint and that after said first investigation by the Department of Justice, the defendants herein continued in their several businesses on the same basis of license and price control without disturbance by the plaintiff herein or any complaint whatsoever by it; and as a result of believing there was no objection to their methods of doing business have expended large sums of money in plants, equipment, research, and engineering, organization, sales expenses, and actual service to the trade and public in furtherance of this plan of doing business; and likewise, thou-

sands of their licensees have committed themselves to expenditures and have made expenditures for and on behalf of themselves and the public in developing large organizations for the service of the public made possible under this method of distribution; and to now disturb the lawful method of doing business because of a change in opinion of the employees of plaintiff would be inequitable, unjust, and contrary to equity.

The defendants further aver that the system of licenses as used by The Univis Corporation has been the subject of litigation in the United States District Court for the Southern District of Ohio, and upheld by said District Court in the case of United Kingdom Optical Co., Ltd., and The Univis Lens Company v. The W. M. Benedict Company in an opinion by his Honor, Judge Robert Nevin, a copy of which is attached hereto and marked "Exhibit A."

26. Answering paragraph 17, the averments thereof are admitted.

27. Answering paragraph 18, The Univis Corporation avers that it has licensed for the current year, through February 17, 1941, approximately 331 wholesale grinders and approximately 6,488 retail finishers, and has the policy of licensing any wholesaler or retailer who can qualify in manufacturing lenses from blanks according to the standards of quality required by The Univis Corporation; and the intent and purpose of the license system is to control and protect quality; and therefore aver, that as an essential part of its license system, it requires that wholesalers only sell to licensee retailers in order that the public will not have the final work done on these lenses by incompetent persons, firms or corporations who have not been approved by The Univis Corporation as to the quality of their work because otherwise the whole control of quality at each stage of manufacture would be lost; and The Univis Corporation further avers that its right to do so has been upheld in the aforesaid case of United Kingdom Optical Co., Ltd., and The Univis Lens Company v. The W. M. Benedict Company in the United States District Court for the Southern District of Ohio, Western Division, by his Honor, Judge Robert Nevin, in the opinion handed down in said action under date of May 31, 1932, attached hereto as "Exhibit A."

28. Answering paragraph 19, The Univis Corporation and The Univis Lens Company, Inc., deny that blanks are purchased or sold with the approval of either of them by any other manufacturer than The Univis Lens Company, Inc. to Univis wholesalers or finishing licensees; and aver that the finishing licensees who sell to the purchasing public at the prices fixed by The Univis Corporation, so sell on the first sale and not on a

resale, because the product as so sold by the finishing licensee is a product for the first time being sold by said finishing licensee to the purchasing public, and is different from the product as received by it on which it has done further manufacturing work.

29. Answering paragraph 20, the defendants aver that the retailer is required to sell the finished Univis bifocal lens that he has completed the manufacture thereof only to the purchasing public because he is licensed by reason of his skill and ability and equipment to adjust and fit and complete the manufacture of the bifocal lenses for each particular wearer who is the patient or customer of the retailer, and therefore, The Univis Corporation prohibits a licensee selling to others than the actual patient who is to wear the lenses in order to ensure that the licensee is responsible directly to the patient for satisfactory completion of said bifocal lenses to exact prescription of that wearer and will continue the subsequent service thereafter which that wearer gets over a period of years from the retailer without charge in repeated adjustments and correcting of position and centering

106 of these lenses. The sale of the lens is only the beginning of that service to the patient and must be continued over a long period of from two to four years or longer; and the licensee must be an established organization qualified for this work and financially able to stay in business over a long period in order to render such a service. The defendants herein deny that a "prescription" licensee must first be recommended by an approved Univis wholesaler, but the defendants further aver that they inquire through every channel of information available to The Univis Corporation to determine the character, professional standing and technical ability, equipment, skill of personnel and financial ability to stay in business of the prospective licensee and as a standard procedure make such inquiries through wholesalers who, through long business and community experience, know the prospective licensees best, and aver as a matter of law that this is both defendant's right and duty; and aver that if the licensee does not continue to maintain such standards and push the sales of the patented product to the fullest extent feasible and adequately supply the public and serve the public, such licensee is removed from the list. The defendants again aver the right as a matter of law to license or not license, contract or not contract, for any reason they see fit with any person, firm or corporation. The defendants further aver that the alleged statements upon which the complaint is based alleged to come from nonlicensees or ex-  
 107 licensees referred to, come from that class of prospective licensees who have been refused licenses or who have been taken off the license list because of their failure to perform in accordance with the standards necessary to maintain the

quality and service of the Univis products and, like all those who are incompetent or fail to perform their duties properly, they blame others instead of themselves, and plaintiff's case is solely base on the misstatements made out by such class of persons.

30. Answering paragraph 21, the defendants deny the averments therein.

31. Answering paragraph 22, the averments thereof are denied; and to the contrary The Univis Lens Company, Inc., and The Univis Corporation aver that they have direct commercial dealings with all of the licensees and that such licensees and customers are an active and integrated part of the manufacturing and merchandising organization of The Univis Lens Company, Inc., with whom it is in constant contact in supervision of sales, service, manufacture of new and improved technical developments, and likewise The Univis Corporation is in constant contact with these licensees for the same purposes.

32. Answering paragraph 23, the averments thereof are denied; and to the contrary the defendants aver that the fundamental basis of determining whether a wholesaler or retailer receives a license is on the question of whether such wholesaler or retailer is competent to do the quality of work required by The Univis Corporation and The Univis Lens Company, Inc.; and the de-

fendants further aver that as a matter of law, The Univis Corporation has a right to refuse to license any prospective licensee, and The Univis Lens Company, Inc., has a right as a matter of law to refuse to do business with any customer for any reason; and the defendants aver that there has been no agreement with any outsiders not to deal with any licensee, prospective licensee or customer, and no such agreement is in effect now or has ever been.

33. Answering paragraph 24, the defendants deny the averments therein; and aver to the contrary that the basis of revocation of a license is either the failure of a licensee to actively push the business of the licensor to serve the public skilfully and adequately or his failure to follow business and professional methods necessary to maintain an organization, facilities, and personnel in order to do quality work.

34. Answering paragraph 25, the defendants aver they have a right, as a matter of law, to license those whom they deem able to perform the quality workmanship required by this manufacturing business; and that they have a right, as a matter of law, to decline to sell for any reason whatsoever, to any prospective customer, and they deny, as a matter of law, that they are required to sell to anyone who wishes to purchase, when to do so would be injurious to their business or the public or both.



35. Answering paragraph 26, the defendants admit the averments thereof as to the maintenance of minimum prices but deny that these prices are "fixed and rigid" prices, as such prices  
109 are changed from time to time in accordance with costs of labor and material, overhead, cost of distribution, and the like; and have been reduced in the past as the facts justify that reduction.

36. Answering paragraph 27, the defendants deny any combination and conspiracy, and aver that the two corporations are in effect a single corporation, owned by the same interests, and the individual defendants are the principal owners and stockholders in their own privately held companies, the defendant Corporation herein, and further deny that anyone has been forced to observe any arbitrary rules and regulations; and deny that any of their licensees, as licensees, have been refused the right to handle, deal in, and sell Univis bifocal lenses; and deny that customers have been limited as to the number of places where they can obtain Univis bifocal lenses and services on such lenses. Defendants further aver to the contrary that they have 331 wholesalers and 6,488 retailers who are more than adequate to supply all demand for the Univis bifocal lenses and the services thereon that the public wishes. Defendants deny that the consumers have been compelled to pay arbitrary, artificial, unreasonable, and noncompetitive prices for such lenses, and aver to the contrary that their prices are in many instances lower than prices for lenses of similar or lesser grade, and that the prices have a relationship directly relatable to costs of labor and materials, overhead, and distribution costs, as well as service costs. The defendants do deny the last sentence of paragraph 27.

37. Answering paragraph 28, the defendants  
110 deny the averments therein, but to the contrary aver that they have created by their research and invention a whole new series of bifocal lenses as witnessed by the patents granted as listed in paragraph 18, and the fact that one or more of said patents have been sustained as valid and infringed, and as representing invention by the United States District Court for the Southern District of Ohio, in the cases of United Kingdom Optical Co., Ltd., and The Univis Lens Company v. The W. M. Benedict Co., and The Univis Corporation et al. v. W. M. Morgan, in the United States District Court for the Western District of Missouri, Western Division; as is shown by the attached Exhibits "A" and "B" hereto.

Wherefore, the defendants, having fully answered, pray that the Bill of Complaint herein be dismissed with costs in these de-



fendants and for such other and further relief as to this Court may seem just and proper.

THE UNIVIS LENS COMPANY, INC.,

By: J. R. SILVERMAN, *President.*

THE UNIVIS CORPORATION,

By: M. H. STANLEY, *President.*

JACK R. SILVERMAN,

Jack R. Silverman,

MYER H. STANLEY,

Myer H. Stanley,

GEORGE F. STANLEY,

G. F. Stanley,

N. M. STANLEY,

N. M. Stanley,

J. R. S.

*Address: New York Central Bldg.,*

*75 E. 45 St., New York, N. Y.*

H. A. TOULMIN,

H. A. TOULMIN, Jr.,

ROWAN A. GREER,

*Address: Mutual Home Bldg., Dayton, Ohio,*

*Attorneys, Solicitors and Of Counsel for the De-*  
*fendants.*

111

*Exhibit B to answer*

In United States District Court, Western District of Missouri,  
Western Division

In Equity No. 2978

THE UNIVIS CORPORATION, AND UNITED KINGDOM OPTICAL COMPANY,  
LIMITED, PLAINTIFFS

*vs.*

WAITMAN M. MORGAN, INDIVIDUALLY AND DOING BUSINESS AS  
MORGAN OPTICAL COMPANY, DEFENDANT

JUDGMENT

The above-entitled cause, filed on April 28, 1938, having been tried in open Court on December 19th and 20th, 1938, and the Court, upon the pleadings and evidence introduced by both parties

and the briefs and oral arguments presented on behalf of both parties, on January 24 1939, entered its decree holding the Letters Patent in suit No. 1,899,777, issued February 28, 1933, valid and infringed by the defendant, and having referred said cause to McKay Cox, Esq., of Kansas City, Missouri, as Special Master, to ascertain the amount of damages to which plaintiffs are entitled and to report his findings and conclusions to the Court, and the Special Master having proceeded pursuant to such order of reference, and the defendant, Waitman M. Morgan, having died on August 25, 1940, while such proceedings were pending, and the parties hereto, being desirous of terminating this litigation, including the accounting proceedings before the Special Master, having stipulated for a settlement of this cause, and the  
 112 Special Master having, in view of such stipulation, filed his report herein, and the Court having approved such report;

It is hereby ordered, adjudged, and decreed:

1. That the Letters Patent here in suit, No. 1,899,777, issued February 28, 1933, are good and valid in law.

2. That defendant has infringed upon said Letters Patent, and that plaintiffs are entitled to recovery of the damages sustained by them because of such infringement.

3. That the plaintiffs herein having, under the circumstances hereof, agreed to accept and the defendant to pay the sum of Five Hundred Dollars (\$500.00) as liquidated damages in full settlement of plaintiffs' claims against the defendant because of such infringement, judgment for recovery of such amount by the plaintiffs from the defendant is hereby entered.

4. That a writ of injunction issue out of and under the seal of this Court directed to the said defendant, his confederates, associates, servants, attorneys, legal representatives, agents, clerks and workmen, and every person acting for or on behalf of said defendant, perpetually enjoining and restraining them, and each of them, from manufacturing and selling articles and things in infringement of plaintiffs' patent except as they, or any of them, may be licensed by plaintiffs.

113 5. That the costs of this action, including those of accounting before the Special Master, be paid by the defendant, and that plaintiffs have execution therefor.

6. That defendant having waived right of appeal in this cause, this judgment be and the same is hereby made final.

MERRILL E. OTIS,

*Judge, United States District Court.*

Dated: October 18, 1940.

Approved as to form:

THE UNIVIS CORPORATION AND UNITED KINGDOM OPTICAL COMPANY,

By ARTHUR C. BROWN,

*Address: 1218 Commerce Bldg., Kansas City, Missouri,  
Attorney for Plaintiff.*

LILLIE F. MORGAN

*Executrix of the Estate of Waitman M. Morgan,  
deceased.*

WILLIAM C. HOGIN,

*Address: 1114 Fidelity Bldg., Kansas City, Missouri,  
Attorney for Defendant.*

Attest: A true copy.

A. L. ARNOLD, *Clerk.*

By E. O. KEEFE, *Deputy.*

113A [Clerk's certificate to foregoing transcript omitted in printing.]

114 In United States District Court

UNITED STATES OF AMERICA

vs.

THE UNIVIS LENS COMPANY, INC., ET AL.

*Statement of evidence*

NEW YORK, June 5th, 1941—

10.30 o'clock a. m.

Trial resumed.

Mr. GLICKFELD. I will call Mr. Jack Silverman.

Jack R. SILVERMAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Mr. GLICKFELD. Your Honor, before examining this witness I should like to indicate that the Government proposes to rely upon Rule 43 (b), indicating that this witness is an adverse witness, as he is one of the defendants in the case.

The COURT. I see. All right.

Direct examination by Mr. GLICKFELD:

Q. Mr. Silverman, you are the Mr. Silverman who is a defendant in this action?—A. Yes.

Q. And you are president of the Univis Lens Company?—  
A. Yes.

Q. Which is a defendant in this action?—A. Yes.

Q. And you are also vice-president of the Univis Corporation, which is also a defendant in this action, are you not?—A. I am.

115 Q. How long have you held those respective positions, Mr. Silverman?—A. As president of the Univis Lens Company, I believe, for about two or three years. As vice president of the corporation, I think, since the inception of the corporation, but I am not sure.

Q. Did you have any previous official position with the Lens Company before you became president?—A. I was general manager.

Q. And in your various capacities as general manager and president what were your duties with the Univis Lens Company?—  
A. General supervision of the business.

Q. Would that include the formation of policy?—A. Yes.

Q. Would it also include some guidance and knowledge of the method of doing business of the company, which would include its distribution?—A. Yes.

Q. What were your duties in connection with the Univis Corporation?—A. Well, very slight. My primary activities were in the Univis Lens Company, and I, of course, participated in the policy making in both companies, and general supervision of both.

Q. What is the business of the Univis Corporation?—A. The Univis Corporation at the present time has the licensing of licensees for the Lens Company; it carries on some promotional work and educational work; advertising work; and it approves licenses for the Lens Company.

116 Q. Would you call the Univis Corporation a patent holding corporation?—A. I do not know exactly what the term means, but I know that they do own some patents.

Q. What are the assets of the corporation?—A. Patents, primary patents.

Q. Do they have anything else?—A. No.

Q. What is the business of the Univis Lens Company?—A. It is the manufacturing licensee that manufactures and distributes Univis lens blanks; the complete multifocal lens blanks.

Q. But it manufactures and distributes only lens blanks?—A. That would not be entirely accurate. There are a few lenses, special lenses that are ordered occasionally. That would be 99.9% of its work, but perhaps there is  $\frac{1}{10}$ th of 1 per cent that might be finished lenses on special order for certain customers.

Q. And what is a lens blank?—A. Well, a lens blank could be merely a rough piece of glass without any work on it; or a lens blank could be a partly manufactured piece of glass.

Q. What is the lens blank that is manufactured and distributed by the Univis Lens Company?—A. Well, it is a lens blank consisting of a reading segment in most cases, and in some cases a reading segment and an intermediate segment, if it happens  
117 to be trifocal. There are bifocal lens blanks and trifocal lens blanks, and one might have just a reading segment, and another might have a reading and intermediate segment.

Q. Is the bulk of the lens blanks manufactured and distributed, bifocal?—A. Oh, yes.

Q. About what percentage would be the bifocal, approximately?—A. Approximately, I should say, about 95 per cent.

Q. And are there more than one kind of bifocal blank distributed?—A. Oh, yes.

Q. How many kinds are there?—A. Well, there are three major types. Then there are variations of those types.

Q. What are the three major types?—A. Well, they are known as style "B." Is that what you want to know, the designation of them? Style "B," style "D," and style "R."

Q. And can you give a description of those different styles in order to differentiate one from the other?—A. Well, starting with style "B," B has a rectangular reading insert, the vertical dimension of which is about  $9\frac{1}{4}$  millimeters. Then style "R" has a straight top and straight bottom, vertical dimension of 14 millimeters, but may vary in form by grinding operations. Then style  
"D" has a straight top and a circular bottom.

118 Q. I take it from your description that the only distinction or differentiation in the blank is in the physical shape of the reading segments?—A. Well, of course, you mean for purposes of identification to the layman?

Q. Yes.—A. That would be the best and quickest way to identify them. They all have different optical purposes.

Q. Do you know approximately how much of your distribution is in the distribution of the various types of blanks that you have just described?—A. Well, I am trying to approximate it for you, but I cannot answer as to its accuracy: The D style is, I believe, about 75 per cent; the B style 10 per cent; and the R possibly another 10 per cent, and the remaining 5 would be distributed amongst other special lenses; cataract lenses and telescope lenses.

Q. To whom does Univis Lens Company sell its various blanks?—A. To licensed distributors—that would be wholesalers; to grinding finishing licensees; it might be large dispensing opticians with complete grinding laboratories or it could be to large optometrical establishments with complete grinding laboratories.



Q. In other words, the Univis Lens Company has two types of customers; one, wholesalers; two, retailers?—A. That is correct.

Q. And the retailers would be those who would be able to finish the lens blank into a finished product?—A. Yes.

119 Q. Can the lens blank that is sold by Univis Lens Company be used for any other purpose than as a lens blank?—

A. No.

Q. For what purpose can it be used only?—A. To make it into a finished optical lens, bifocal lens.

Q. The Univis Lens Company in selling the blanks sells them for value, does it not? Sells them outright to its customers?—A. Sells them at a price; yes.

Q. And it receives a price for them?—A. Yes.

Q. Does the Univis Lens Company manufacture the blanks itself?—A. Yes; if I understand. You do not mean the raw glass?

Q. No. I mean the lens blank.—A. The lens blank; yes.

Q. For how long has it been manufacturing lens blanks?—A. Since 1931.

Q. And prior to 1931 was the Lens Company in the business of selling lens blanks?—A. Yes.

Q. And where did it obtain the lens blanks?—A. From the United Kingdom Optical Company of London, England.

Q. And has it received such lens blanks from the United Kingdom Optical Company subsequent to 1931?—A. Yes; in far lesser quantities.

Q. And does it still obtain such lens blanks from the United Kingdom Optical Company?—A. Well, conditions affect that.

We still try to get certain types and certain odd 120 numbers they are still in position to produce, and, of course, we have lost shipments at sea and so on, so I would say there are very few coming in at the present time.

Q. Has the Univis Lens Company obtained lens blanks from any other company other than the United Kingdom Optical Company?—A. I believe in 1931, we received some from the Shuron Optical Company who were then manufacturing licensee.

Q. And do you know for how long a period the Lens Company obtained blanks from the Shuron Optical Company?—A. I cannot exactly, no; I am sorry, but I might, of course, get the information for you by reference to records.

Q. Would it have been a substantial period of several years, or just a short period?—A. I think possibly a year or something of that sort; not a very long period.

Q. Has there been any other source from which the Univis Lens Company has obtained lens blanks?—A. No.

Q. You have mentioned that the Shuron Optical Company was a manufacturing licensee. Can you explain from whom it re-

received a license to manufacture the lens blanks?—A. Yes; from the Univis Corporation.

Q. And do you know when that arrangement went into effect?—

A. Well, I said I thought it was 1931, but I am not too sure of dates.

Q. Do you know that a contract was entered into between the Univis Corporation and the Shuron Optical Company in 121 relation to the manufacture of lens blanks which you have just described?—A. I am not sure whether it was a contract, but I think there was. I have not referred to that correspondence for so many years.

(Document marked "Government's Exhibit 1" for Identification.)

Q. I show you Government's Exhibit 1 marked for identification. Can you identify that document?—A. Well, this appears to be an agreement between General Optical Company, Shuron Optical Company, and the Univis Corporation. Without reading it through, I don't remember the contents, I think there were two agreements, and therefore I do not know just which this is unless you want me to take the time to read it through.

Q. Yes, please.—A. Shall I?

Q. Yes.

The COURT. Mr. Glickfeld, is it true that this agreement refers to a patent which has expired?

Mr. GLICKFELD. That is correct, your Honor.

The COURT. What is the purpose of it, then?

Mr. GLICKFELD. To show that some of the patents were licensed to other manufacturers under certain conditions. That is the Univis Lens Company was not the sole and exclusive licensee of the Univis Corporation

122 The COURT. But aren't we dealing with patents that form the subject matter of the complaint?

Mr. GLICKFELD. You see, our complaint, your Honor, alleges a conspiracy in the distribution of certain optical lens blanks and lenses over a long period of time, beginning back in 1931, and the purpose of this is to show that during the period of the conspiracy, or alleged conspiracy, that the Univis Lens Company was not the only manufacturer under the patents.

The COURT. Under what patents?

Mr. GLICKFELD. Under the patent which the defendants have alleged in their answer gives them the right to distribute in the manner described by the Government as a violation of the anti-trust laws.

The COURT. I do not see its relevance myself. However, proceed.

Is there a question pending?

The WITNESS. He asked me to read this contract, and, of course, it is several pages long, and it is many years old—

Q. I asked you if you can merely identify it as the contract which was the basis for the Shuron Optical Company manufacturing lens blanks for the Univis Lens Company.

The COURT. If the question is whether such a contract was entered into between the parties as stated therein, I suppose the witness would say yes.

123 A. I have said that this is a contract between the corporation, the General Corporation and the Shuron Company, and I can see it here and I can identify it as such.

Q. Then you have answered the question.—A. Thank you.

Mr. GLICKFELD. I should like to have this document marked for identification, please.

(Marked "Government's Exhibit 2" for identification.)

Mr. GLICKFELD. And I offer Government's Exhibit 1 for identification in evidence which has just been identified by the witness.

Mr. TOULMIN. May it please the Court, am I to understand from counsel he is now offering in evidence the Shuron-General Optical contract with the Univis Corporation heretofore marked for identification as Government's Exhibit 1? Is that correct?

Mr. GLICKFELD. That is correct.

Mr. TOULMIN. If the Court please, then we object to this as being utterly immaterial in this action. It deals solely with the question of some expired patents that have no active bearing, and have not had for some years. We can see no materiality on the present issue. The issue here, as I understand it, and the basic and fundamental issue, is whether certain patents which are active and mentioned by the Government in its complaint have been the subject of a legal and legitimate licensing system. This  
124 seems to depart from that situation very markedly and materially.

The COURT. I sustain the objection.

Mr. GLICKFELD. May I point out to your Honor one paragraph in the contract to which you have just sustained the objection, which is paragraph 7, which provides that the Shuron Optical Company will be permitted to sell those lenses only under certain conditions.

The COURT. I am sorry, Mr. Glickfeld, but I do not see the bearing of this instrument.

Q. Mr. Silverman, I now show you Government's Exhibit 2 for identification. Can you identify that document?—A. Yes. This is an agreement between the Univis Corporation and the Univis Lens Company.

Mr. GLICKFELD. I should like to offer that in evidence.

Mr. TOULMIN. No objection.

(Marked "Government's Exhibit 2" in evidence.)

125 The COURT. I suppose you mean to supplement that offer by offering also the instruments that are referred to in the first "Whereas" clause?

Mr. GLICKFELD. Until this morning the Government has never seen those documents. Unfortunately, counsel for the defendants did not have extra copies of them, and he has shown me some originals of documents which I cursorily looked at this morning; and unless—

The COURT. As it stands it is an incomplete document.

Mr. GLICKFELD. Would Mr. Toulmin have any objection to permitting us to introduce the other document?

Mr. TOULMIN. I have no objection, your Honor. I think the point is quite immaterial so far as the Government's case is going to ultimately develop; so I am raising no objection. The documents in question have been accessible to them for quite a long time if they wished them. I brought the originals along at their request, and they are the characteristic British contracts your Honor is familiar with, quite complicated and lengthy; a series of them.

The COURT. Yes.

Mr. TOULMIN. But to have the complete story you should have those British contracts before you.

126 The COURT. I will receive it in evidence, but I will point out to counsel that they are not complete.

The COURT. You can look those other documents over at your convenience, and if you think there is anything necessary to be developed later you may do so.

Q. Mr. Silverman, you have just identified a contract which was executed between the Univis Lens Company and the Univis Corporation, a contract executed in 1931. Was that contract the beginning of the present method of distribution of Univis lenses by the Univis Lens Company?—A. The present method; yes. It was the broadening of the original method of distribution.

Q. What was the original method of distribution?—A. Well, the original method of distribution was, I should say, born of necessity, wherein we had very limited production facilities coming from England, and we were merely distributors of a new and revolutionary idea in bifocal blanks; and we had a few licensees—that is, dealers in different cities throughout the United States who purchased Univis lens blanks, ground them in their own places—they were retail licensees primarily—and dispensed or distributed right in their own establishments to their own patients.



That went on for the first few years of the development of the business.

Q. Will you identify those years?—A. Well, we started  
127 in 1927, I believe; actually the end of 1926, but there was no business done then. 1927 to 1931. In 1931 we had established the practicality of the product and its adaptation to a great extent, and then we broadened distribution through the usual channels, which are wholesale channels.

Q. Was the Univis Corporation in existence prior to 1931 or prior to the time of the execution of this agreement?—A. Not to my knowledge; no. I believe it was formed in 1931; but I am not too sure of the date.

Q. Well, was it formed shortly before or at about the same time that this agreement was executed?—A. That is my recollection, that it was formed in 1931; yes.

Q. And do you know the purpose for which that corporation was organized?—A. Yes; the corporation was organized to license manufacturers, wholesalers, and retailers to manufacture and finish and distribute Univis products under certain patents.

Q. In other words, the Univis Corporation was organized as a licensing company to license for distribution the product made by the Univis Lens Company?—A. Or any other manufacturing licensees. It was formed for the purpose of licensing all manufacturers. Unfortunately, that never developed, although the effort was made.

Q. Was it the original intention of the Univis Lens  
128 Company and the Corporation that other manufacturers than the Univis Lens Company would be licensed to manufacture Univis lens blanks?—A. Yes.

Q. And how many such companies have been so licensed?—A. Only one.

Q. And that one?—A. The Shuron for a limited period of time.

Q. But Shuron is no longer licensed to manufacture lens blanks?—A. No.

Q. Isn't it a fact that the American Optical Company has also been licensed to make lens blanks under some patents owned by the Univis Corporation?—A. Yes; but not Univis lens blanks.

Q. Do you know what the American Optical Company is licensed to manufacture?

The Court. By whom?

Mr. GLICKFELD. By the Univis Corporation.

A. A lens known as Ful-Vue.

Q. Isn't it a fact that some time prior to 1934 there was a patent interference between the Univis Lens Corporation and the American Optical Company?—A. No; there was no Lens Company in



existence at that time, if I understood you. Did I hear you say 1924?

Q. 1934.—A. Oh, I beg your pardon. Prior to 1934 there  
129 was a patent interference on an application, I recall. I do not remember the exact date.

Q. And is it not a fact that the interference was terminated by an agreement whereby the American Optical Company was licensed under the Univis Corporation patent?—A. No; that is not my recollection at all.

Q. What is your recollection?—A. I do not believe that the license—I may not be clear on this in my own mind; it is some time ago—but I do not believe that any license for American Optical Company was taken as a result of an interference action on an application.

Q. Do you recall the circumstances which led up to the granting by the Univis Corporation of a license to the American Optical Company?

Mr. TOULMIN. May it please the Court, I have waited for these few questions before objecting; and I object now because we are getting far afield from the complaint here. The complaint merely involves the Univis Lens Company, the Univis Corporation, and certain defendants. It is not a complaint about conspiracy with other manufacturers, such as American Optical and others. It is no complaint about the history between them. So I think, if I may submit to the Court this thought and objection, that if this is pursued we will be in by-ways which really have no bearing on the question in issue.

130 The COURT. What is the relevancy, Mr. Glickfeld?

Mr. GLICKFIELD. Well, the relevancy is twofold. I think yesterday at our pre-trial conference you evinced an interest in trying to find out whether the Lens Company was the exclusive licensee of the Corporation, and whether or not other companies had been licensed under all or some of the patents owned by the Corporation; and secondly, the Government feels that in order to get a full understanding of the distribution by the Lens Company, in view of the fact that the defense is going to be based on patents, that we ought to show just what has happened to these patents so far as the licensing of manufacturers is concerned.

The COURT. It is one thing to find out whether there are a number of licensees to ascertain whether the Lens Company is an exclusive licensee, and another to go into the history of why and wherefore other companies may or may not have acquired licenses. I sustain the objection.

Mr. GLICKFIELD. Would that objection go to the offering in evidence of the contract between the American Optical Company and the Univis Corporation?

The COURT. I do not know. Suppose you offer it and then we will see.

131 Mr. GLICKFELD. I should like to have this document marked for identification.

(Marked "Government's Exhibit 3" for identification.)

Mr. TOULMIN. If the Court please, we object to this offer on the ground that it is immaterial to the issues here as to whether or not the American Optical or any other company has been licensed, as there is no charge made in the bill of complaint of any violation of the Anti-Trust Laws by reason of having licensed American Optical Company, but only by reason of having licensed our channels of distribution, our commercial channels of distribution. We believe it is immaterial, and therefore object to it.

Mr. GLICKFELD. I only have the same reasons as previously suggested for the introduction of this in evidence.

The COURT. You offered as one reason the inquiry made by the Court with respect to it. Of course, the Judge who happens to be sitting at the trial—his inquiries do not make relevant the subject matter of the inquiry.

Mr. GLICKFELD. Yes. I also indicated, to show that the patents were not exclusively licensed to the Lens Company.

Mr. TOULMIN. If the Court please, may I interrupt?

The COURT. Yes.

132 Mr. TOULMIN. It would save you the reading of a lengthy document. We have no objection to admitting that our license from the Univis Corporation for Univis lens is non-exclusive, and therefore that is the fact. And therefore, to have that document merely to prove that in the record would not be necessary.

The COURT. Is there any other purpose that you have for offering this?

Mr. GLICKFELD. Merely that, and to show the background of the conspiracy, your Honor. I think the Government has always taken the position that in a conspiracy case it is necessary to have the complete background and the history of the development of the organization and of the development of their distribution. And we feel it gives for a greater understanding of the issue involved if your Honor were to have before him in the record such evidence.

The COURT. Well, I will receive it subject to the right to strike out at the conclusion of the trial if it appears at that time that it serves only to encumber the record and not to add to the understanding of the issues.

(Government's Exhibit 3 for identification received in evidence.)

Q. You have previously testified, Mr. Silverman, that the  
133 Univis Lens Company sells lens blanks only to licensees of the Univis Corporation; is that correct?—A. Yes.

Q. And that comes from the contract or the arrangement which was entered into between the Lens Company and the Corporation?—A. Yes.

The COURT. Is that contract in evidence?

Mr. GLICKFELD. It is, your Honor.

The COURT. Is that contract which you offered Exhibit 2?

Mr. GLICKFELD. That is correct, your Honor.

The COURT. It is by virtue of that contract that you say this arrangement between the two companies enables the Lens Company as licensee to manufacture under the patents cited in the complaint?

Mr. GLICKFELD. That is correct, your Honor.

The COURT. All right.

134 Q. Does the Univis Lens Company sell lens blanks to any wholesaler or retailer who is not a licensee of the Univis Corporation?—A. No.

Q. Now, you have testified that the corporation has several kinds of licenses. Can you briefly describe the various types of licenses that the Univis Corporation has issued?

The COURT. I am sure that those will be offered. Why don't you offer the instruments themselves?

(Marked "Government's Exhibit 4" for identification.)

Q. Mr. Silverman, can you identify that document?

The COURT. I suppose it will be conceded that this is a typical form of agreement made between the Univis Corporation and the distributors.

Is that correct?

The WITNESS. Yes; that is correct.

The COURT. Do you offer it in evidence?

Mr. GLICKFELD. I do offer it in evidence.

Mr. TOULMIN. No objection.

(Government's Exhibit 4 for identification received in evidence.)

Q. So far as you know, Mr. Silverman, has the Univis Corporation any policy in determining which wholesalers they will license?—A. Yes.

Q. And what is that policy?—A. The policy is based  
135 upon the ability of the wholesaler to finish Univis products, to distribute them, and to serve the doctors and optometrists and opticians in a specified locality; his financial ability to do so; his integrity and his mechanical facilities for doing the job.

Q. And in carrying out that policy does the corporation make an investigation of the wholesalers?—A. Very definitely, through the service men of the Univis Lens Company.

Q. And can you describe the usual type of investigations?—A. Well, it is not exactly an investigation. It is more a matter of a call by a service man to interest first a wholesaler, because we are constantly soliciting business rather than having people come to us and urging us to sell them. We call on a wholesaler. If he is interested in Univis we go through the complete Univis story with him. We then determine his facilities for handling a complete Univis setup, because it requires a very substantial investment due to the wide variety of lens blanks that are necessary for a wholesaler to carry, and we then go over the accounts of the wholesaler so that we can have our service man go out and call on his customers, so that he can determine whether he is going to have enough business to justify the investment necessary to become a distributor. That just about covers the setup. If he is then interested, of course, we have to go in and educate his  
136 lens grinder to the work that is necessary.

Q. You have mentioned in your previous answer that you told him the Univis story. What do you mean by that?—A. I mean going into all the technical description of the 21 different types of multiple focal lenses that we have available.

Q. Am I to understand from that that every wholesale licensee of the Univis Corporation has had explained to him the technique of manufacturing or processing a lens blank into a finished lens?—

A. Time and time again. Not always too well, however. He cannot always remember it all.

Q. There has been, so far as you know, no wholesaler given a license without that explanation?—A. Not to my knowledge; no.

Q. And you have also indicated by your answer that the service men, the men who do the actual processing and finishing of the lens blanks to the lens itself, are instructed by someone from the Univis Lens Company as to how the lens blank has to be completed into a finished lens?—A. They have grinding charts and printed grinding instructions, besides personal contact.

Q. What are those grinding charts and printed instructions?—A. Do you want me to try and describe them to you verbally?

Q. Yes, please.—A. In the first place, the Univis  
137 Lens blanks are computed on a series of what are known as corrected curves; that is, a series of curves for each individual prescription, so that you get the widest angle of vision and the best result from the prescription; that is, the consumer or wearer gets it. Now, those curves have all been computed by our technical department, and there is a chart, and that chart



shows the curve to be ground on every prescription. We furnish tools to the distributor, special tools that are made to a special series of curves, both grinding and polishing tools for the segment surfaces of Unavis, and then, of course, we have printed grinding instructions covering the grinding for cases of vertical imbalance and prismatic effects. If you want me to go into that, I will be glad to, but it is rather complicated.

Q. Let us take it step by step and, perhaps, it won't be so complicated.—A. All right.

Q. Isn't the chart merely a guide for the service man in order to enable him to pick out the proper blank in order to fill a particular prescription?—A. Partially. That enables him to pick out the blank and then tell him what curve to put on the blank for a certain prescription. I would like to clarify one thing: You are referring to a "service" man. I mentioned service man but I was referring to our own men who had the educating and promotional work in the field to do; traveling in the  
138 United States and calling on doctors and so on.

Q. I am referring to the men who work for the wholesalers.—A. Surface man is the man who grinds lenses.

Q. In answer to a previous question you said the chart can be used in order to point out to the surface grinder the curves to be put on the lens blank.—A. That is right.

Q. What does the prescription show?—A. The focal power that is desired. That is one thing that is on there.

Q. And the chart then merely indicates to him how much grinding or how much of a curve he is supposed to put on the lens blank in order to fill the prescription?—A. It tells him what curves to put on; what blank to select, and what curves to put on those blanks.

Q. And it is used as an aid, is it not, an aid to the surface grinder in completing the product, so that he can take the proper blank from his various blanks in stock in order to fill the particular prescription?—A. It is a guide to him, yes; an instruction.

Q. What are the other instructions which you mentioned which the surfer uses in order to fill a particular prescription?—A. Well, if we will simply stick to the ordinary prescription for a moment, because some of them get very complicated, in prismatic grinding and so on, in an ordinary prescription he must be instructed to finish the segment surfaces, which is very unlike  
139 finishing the segment surfaces on the old type bifocals.

These tell how and show how, and in many instances he is able to pick it up quickly himself; but he is shown how to finish the segment surfaces themselves and carry out the proper effect of the reading segments themselves; that is, get the proper proportions and then shows the technique of weighing off for cylinder



grinding, because you see a straight top segment is entirely different in the working than a round segment or curved segment.

Q. Are those written or oral instructions?—A. They are grinding instructions that are printed for certain types of work, but what I have referred to is oral instructions by our men who will go in and take off their coats and put on an apron and go into the shop and have a session with the grinders.

Q. Is that session directed to informing the surface grinder how to finish the "D" blank, which you indicated represented 75 per cent of the sales of the Univis Lens Company?—A. Yes; the "D" blank as well as the others.

Q. So that we are to understand from your testimony that the wholesaler's surfacer grinder is instructed by the Univis Lens Company to do a particular job in a particular fashion just for the Univis lens blank?—A. Yes.

Q. Do you know from your experience whether those instructions, and the carrying out of those instructions in  
140 the finishing of the blank to the lens are similar in the case of other blanks, or are they peculiar just to the Univis blanks?—A. Well, they are quite peculiar to Univis, because of Univis being the only straight-top segment.

Q. Now, can you explain the type of instructions, spell it out for us, that your service men give to the surface men; if you know just what your service men tell the wholesaler's surface grinders in order to enable the latter to complete the blank into a finished lens?—A. Well, I will be glad to tell you what I know of it. I do not do much of it. We have some service men here who can tell you the exact story. I will do my best, however. It primarily refers to the first operation, which is the finishing of the segment itself.

Q. May I interrupt? Is not the first operation the laying out of the blank itself?—A. No; that is about, probably, the tenth or so. By "laying out" I am assuming that you mean for grinding the cylinders?

Q. I am sorry. You go right ahead and explain the technique, and the information which is given by your service men to the wholesaler in the completion of the lens blank.

Mr. TOULMIN. If the Court please, if I might make a suggestion, it might be helpful to expedite this matter: You will recall  
141 yesterday I had these two boards with the various pieces on it. Government counsel is welcome to use those if they wish in connection with this examination, which may make it much plainer to the Court and everyone as to how this is done.

Mr. GLICKFELD. I think I will accept the courtesy, your Honor.

The COURT. Very good. Perhaps that had better be marked for identification.

(Board with blanks marked "Government's Exhibit 5" for identification.)

Q. Mr. Silverman, I hand you Government's Exhibit 5 marked for identification, to be used as an aid in your describing the functions requested in the last question directed to you.—A. Do you want me to describe it to you or you want me to describe it here? Shall I just stand up here?

The COURT. Suit your own convenience. If you want to sit in the jury box perhaps we could hear it all right.

A. (Continuing.) Now, the first product here is a rough lens blank as it is received from the Univis Lens Company [indicating].

Q. May I interrupt you a minute? Does that represent the blank which the Lens Company always sells to the wholesaler, or  
142 does it just represent a blank which is sometimes sold to the wholesaler?—A. It represents a part of our sales, the other part being in a semi-finished form. This represents the greater part of our sales [indicating], and this represents a lesser percentage. This has several further operations on the segment surface which we are now beginning to do at our Dayton plant [indicating]. Up until the first of this year we sold 95 to 98 percent of all our blanks in the form of the first or rough lens blank.

The COURT. Is it only the reading segment that is to be made out of that blank?

The WITNESS. No, sir. From this blank the distance correction and the reading correction are both to be made into a finished lens. The reading addition, that is, the amount that will be added to the distance correction, is fixed as a part of the manufacturing process performed in our plant.

Q. May I interrupt a moment: If I understand your previous explanation, the reading segment is finally determined in the blank which the Univis Lens Company sells to the wholesaler.—

A. The reading addition is determined; that is, focal power.

Q. Just so we understand each other correctly: Is there anything which the wholesaler does to change the focal power of the reading segment in the process which you are now about to describe?—A. Rarely.

143 Q. Does it ever change?—A. Yes.

Q. On rare occasions?—A. Yes.

Q. For what purposes?—A. For the purpose of making an addition that is not made in stock production, and that would be by a variation of the curve for which he would have instructions from us. Shall I proceed?

Q. Please.—A. Now, the first operation is the taking down of the reading segment to a specified size and shape and putting an accurate curve on the convex side in accordance with the Univis grinding chart. The difficulty in that operation is that you have a segment that has a straight top and a circular bottom and therefore the grinding technique required to retain the optical centering of this segment is entirely different than that required in the round or circular segment.

Q. And will you explain what you mean by the optical centering?—A. The centering of the reading segment itself; that point at which the clearest reading and the best reading will be done by the patient.

In the case of the Univis "D" it has to be kept five millimeters from the top of the reading segment. It can only be kept five millimeters if the exact proportion is kept with this segment which has a straight top and circular bottom.

144 Q. The optical center is already fixed in the blank when sold to the wholesaler?—A. Yes. To grind it from that point on you can change that materially if you do not grind in accordance with proper instructions.

Q. You mean if the wholesaler did a bad job?—A. Or an incorrect job.

Q. And if he used the usual amount of carefulness his processing would not affect it?—A. I am afraid there is no such term as "usual amount."

The COURT. You are fencing around, I am afraid, Mr. Glickfeld. What we are trying to develop is this: whether in the wholesaler's surfacing the operators do something particular and special with respect to this lens that they do not follow with other reading segments?

Mr. GLICKFELD. That is correct, your Honor.

145 The WITNESS. Then specifically the operation is different; the technique that is required, is different, as I tried to point out before with a round or circular segment, because you can put a round or circular segment on to a tool, and without any hand grinding of any type just spin it and grind it. It is circular, and it will remain circular, and there is nothing you do to affect the optical property of that segment. Anything you do here other than the correct thing will change the optical center of that reading segment. A very undesirable thing from the standpoint of Univis.

Now, we are past the stages then of finishing the segment side—

Q. Before we pass that—I do not mean to fence—but you have compared this straight top segment and the finishing thereof with a round segment?—A. Circular, yes.

Q. Circular?—A. Or semicircular.

Q. Can you make a similar comparison between this segment and segments that are found in blanks known as the Widesite blank manufactured by the Shuron Optical Company, or the Panoptik blank manufactured by Bausch & Lomb, or the Ful-Vue blank which is manufactured by the American Optical Company? Do you make a similar differentiation?—A. Well, you see the wholesaler never receives a Widesite, Ful-Vue, or Panoptik 146 in the rough form. The finishing of those products is done at the factory, so that he does not have the same problem. Widesite are sold only in a semifinished form, which is equivalent to this form, which is No. 2 on this board; Ful-Vue is sold in No. 2 form; and to the best of my knowledge Panoptik is also sold only in this form, completely finished; so the same problem does not exist; but the technique for doing the job up to the point they send it to the wholesaler would be required in their plant.

Q. So that that technique would be identical, but in one instance it is done by the wholesaler and in the other instance it is done by the manufacturer himself?—A. In our case the wholesaler finishes the lens blank from the form as shown in No. 1 on this card.

We have then what is known as a semifinished blank wherein the segment surface has been finished with the proper proportion of segment and with a proper finish on that surface. Now, that is ready to have the convex—I mean the concave surface ground on the lens. Now, if it is a spherical lens it will just have a spherical curve on the back that requires no special laying out. This is where you come to your question of laying out, I believe.

If it is a cylinder lens—I think 70 or 75 per cent of all 147 prescriptions are cylinders, or cylinder and sphere in combination—only a very small percentage are just plain spheres—the laying out is the job that is most difficult because of the straight top segment. A cylinder is ordered at a certain axis. That axis must be within one degree on many cylinders, 2 degrees tolerance, perhaps, on some cylinders. Cylinders of weaker focal power are permitted as much as 2 degrees of tolerance. The stronger cylinders, 1 degree; and some refractionists and some ophthalmologists would not accept even a 1 degree tolerance. So it is obvious that the straight top segment, if the axis is ground 1 degree off one way or the other, you have spoiled the lens. Whereas if it were a round segment or a circular segment, if the axis was off as much as 5 or 10 degrees, you could correct it by merely twisting the lens, because the segment would be the same no matter how you twisted it.

Therefore the problem was to get the layout man and your cylinder lens man to grind his axis absolutely accurate and down



to within a degree. As a matter of fact, when we started with Univis we had great difficulty in securing wholesale customers because the servicing departments said, "We cannot grind those Univis; we cannot get the axis straight." But years of educational work, I think, has corrected that, and my impression is that their general quality of work with Univis is the same as with other lenses.

Q. Just what do you mean by the laying out? Can you describe that?—A. Well, laying out involves the taking of the lens blank, spotting the segment in the case of Univis, because it is a straight line, and therefore you must have a guide for the several dots there put on the top of the segment.

Q. Is the lens laid out on a chart?—A. A protractor.

Q. It is an ordinary protractor?—A. We furnish a Univis protractor which is not unlike other protractors.

Q. If I understand you, the layout man in the wholesale establishment could take the Univis lens and put it down on this protractor, whether the protractor was made by the Univis Company or any company?—A. Yes. If the protractor had straight lines on it to guide himself by; and we make sure that they have straight lines so they conform to the straight line segment of Univis.

Now, he lays off the axis. If the axis is at, for example, 85 degrees, or 45 degrees, he will set the position of his segment in accordance with the prescription instructions that he has received, and will then lay that off so that the axis of the cylinder will go out 45 degrees, which is approximately true of the angle.

Q. Isn't it true that that procedure which you just explained is merely the placing of the lens upon the protractor, and placing dots, which dots are placed in accordance with the angles and the degrees printed on the protractor itself in conformance, of course, with the prescription?—A. Yes; that is correct, only that the degree of accuracy required, as you can see, is so much greater; but the general idea is the same.

Now, as to the grinding of the cylinder—we have it laid off—assuming we have it laid off—

Q. Now, before we go beyond that, do you know from your own knowledge whether this laying out procedure is any different in the case of Univis than it would be in these other blanks commonly known as the Widesite, Panoptik and so forth?—A. Yes; I thought I mentioned before that any curve top has a tolerance of several degrees, whereas a straight top has no tolerance at all, because you will throw it off center so that the line-up will not be correct in the finished lens, and therefore you get certain prismatic effects.

Q. From your own knowledge would you be able to explain the difference in the laying out of a Panoptik and the laying out



of a Univis to fit the same and identical prescription?—A. The degree of accuracy would be the difference. The accuracy of technique of the operator, which is the result of training 150 and instruction.

Q. If I understand your answer correctly you would say that the layout man would have to be more careful in laying out the Univis lens than he would in the Panoptik blank?—A. Well, the Panoptik blank having a slight curve, the distance is less than it would be with some other bifocals.

Q. Then it would merely be a degree of difference of care and a difference in the degree of accuracy, but the actual physical laying out of the blank upon the protractor and the placing of the dots, and the angle, would be identical?—A. Yes. The laying out.

Now, we have our blank laid out. Now, the problem of cylinder grinding is obviously more accurate in a straight top segment for the reason that the cylinder tools must be to absolute accuracy. We were instrumental in distributing cylinder lap grinding machines throughout the United States so that cylinder tools would be made on an automatic machine rather than by the old method of hand filing, which was good enough for the old type bifocal that could be twisted 5 or 10 degrees.

Q. You do not mean to infer by this present answer that the tools as you just described are used only on Univis?—A. Oh, no.

Q. They are used on all the other types?—A. Not 151 the cylinder tools. The tools for the segment surface are used only on Univis.

Q. And just so I can understand you correctly, you are now testifying that in order to put on a cylinder curve the wholesaler must use a surfacing tool which is made peculiarly for this particular blank and is not or cannot be used on any other blank?—A. No; I did not say for the cylinder curve. I said for the segment curve as distinguished from the cylinder. The cylinder tool he can use for any lens.

Q. Can you describe this peculiar segment-curve tool which can be used only for the purpose of grinding?—A. It is not peculiar. It does not require any description. It simply has a set of curves that are computed by us for Univis in conformity with the contact curves that we have placed on the segment at our factory. They are curves computed to give vertex power and to give the widest angle of vision. It is not that the tool physically is different. The curve of the tool is computed for Univis blanks only and would not be suitable for others.

Q. When you say the tool for the segment curve, you mean that this tool is used only to grind the segment, or it is used to grind the whole blank?—A. The whole blank. By the segment

152 curve I mean the surface on the convex side of a Univis blank.

Q. If I am to understand your testimony, in order to put on the proper curve on to the blank the wholesaler must use the tool made for him due to certain mechanics provided for by the Univis Lens Company?—A. The radii of the curve is established by our computation of curves made in connection with all Univis.

Q. And the tools are adapted to the particular curves?—A. The tools are adapted to the curves?

Q. Yes.—A. No; the curves are adapted to the tool.

Q. Can these tools be used for putting on a curve on a non-Univis blank?—A. No; they can use it if they wanted to, but it would not serve a useful purpose that I can see.

Q. Do you know whether or not they are used?—A. No; I could not answer that. I am not in the shops.

Now, we have a cylinder, ground and polished: Assuming that that cylinder is at a greater axis, the lens is then in what is known as an uncut form. At that point the operation ceases on some orders in the wholesale place, and in some other prescriptions it proceeds on to a completely finished and edged lens.

Q. In what prescriptions would the operation cease at that point, Mr. Silverman?—A. Where the retail licensee, representative licensee does no surface grinding, but does merely  
153 cutting and edging. Some of them have just an edging stone, and do their own cutting and edging; so they would purchase from the wholesaler in uncut form, and do the additional mechanical operation in their own place.

Q. If I understand it, then, the strength of the reading segment and of the distance segment have already been completed in this instance?—A. The focal power; yes.

Q. And all that the retailer would then do in this instance would be to shape the lens, to cut it.—A. To cut and edge, position the segment, center it properly in accordance with the measurements of the individual patient.

Q. And is this done by the finishing retailer licensed only, or also by the prescription retailer licensee?—A. Both.

Now I think we have arrived to where the lens has been cut: It has been cut with the diamond cutter. It is edged, either with a flat edge, if it happens to be a rimless job where holes are to be drilled, or with a bevel if it is going into a rim; and that completes the product at that point.

Q. Now, if you recall, Mr. Silverman, my original question which gave rise to this explanation was, if I recall correctly, for  
154 you to give a description of the instructions which are given by your service men to the wholesaler surface men. Now, am I to understand that the description that you have just

gone through represents the story given by your service men to the wholesaler surface grinder?—A. Well, only part of it because the surface grinder only grinds surfaces. He would have to stop—oh, that was my fault. I went beyond your question. He would have to stop before he started to cut and edge. Surface grinding would stop where I said that gives you the uncut lens. That would be the end of the function of the surface man.

Q. In the instructions given by your service men, is there also included some instructions concerning the edging of the lens after it reaches that particular stage?—A. I would say, only to caution them very carefully in the laying out so that they retain the straight top segment in conformity with the geometrical center of the lens, so that you do not have the segment tilted one way or the other. That is, an instruction of care. A competent man should know that that would be necessary, but very often they do not; and in order to avoid their spoiling lenses due to inaccurate work, we instruct them as to the correct way to do it, the correct way to lay them out, and try to avoid the poor quality of work that would result if it were done improperly.

Q. But doesn't the layout come before the lens reaches  
155 that particular stage that we are talking about, or is there a subsequent laying out?—A. There is a subsequent laying out after, because, you see, all those markings would come off when the lens was taken off of a block it is pitched to—those markings would be erased in many instances; so the lens is then cleaned up in a solution, and then the axis is checked on other instruments. Then if the axis does not conform on the instrument used for checking, an instrument known as a lensometer, or vertometer—those are instruments for checking focal power and axis and prism.

Q. Are these instruments also used in checking the same things on a non-Univis?—A. Oh, yes.

Q. Now from your own knowledge and experience, Mr. Silverman, can you tell us those points of differences in the finishing of a non-Univis bifocal blank from the blank stage to the finished lens, from the finishing of the Panoptik or the Ful-Vue or the Widesite blank to a comparable finished lens?—A. The major difference lies in all of the operations done by the Univis wholesaler to finish the segment surface, but he is not required to do this on the other bifocals mentioned. And the accuracy of laying out for cylinder work.

Q. Then I understand it that you point out two differ-  
156 ences in this process: One would be the finishing of the segment surface, and two, would be the degree of accuracy necessary for the completion of the blank to the finished lens; is

that correct?—A. That is true, qualified to this extent, only for type "D." You haven't covered any of the grinding for the others.

Q. I understand we are talking now only about type "D" which represents about 75 per cent of the sales by the Univis Lens Company?—A. That is right.

Q. And passing over for the moment the degree of care, can you specifically point out the differences in the finishing of the surface segment in the Univis and in the finishing of the surface segment in the non-Univis blank?—A. Well, if you are speaking of non-Univis, do you mean circular, semicircular segments? I have never finished a Panotik or Ful-Vue or Widesite, so I can't answer your question. I can make a general statement regarding the Kryptok, because in the early days I was a lens grinder, and I did finish lots of round segments. I can tell you that difference.

Q. It was my understanding that I asked you, Mr. Silverman, what within your own knowledge and information the differences were in the completion of the Univis blank to the finished lens, and in the completion of a non-Univis blank such as Panoptik,

157 Widesite or Full-Vue, from the blank stage to the finished stage; and I also understood your answer to be that there were two differences, one in the finishing of the segment surface; two, the degree of care necessary in the two operations; one operation being the finishing of the Univis; the other being the finishing of the other blanks that I mentioned. I now ask you, based upon that testimony, to spell out what is this difference in the finishing of the surface on the segment of a Univis and the finishing of the segment surface on these other blanks that I have mentioned, namely, Ful-Vue, Panoptik, Widesite.—A. I cannot answer it because I do not grind those. I have never ground a Ful-Vue, Panoptik, or Widesite, and neither is a wholesaler required to do it.

The Court. We will take a few minutes recess.

(Short recess.)

158 Q. Before we took the recess, Mr. Silverman, you had indicated that one of the differences in the completion of the Univis blanks to the finished lens, the difference between that process and the completion process used in the completing of the other types of blanks to lenses, was the finishing or the putting on of this surface curve. Now, is this surface curve on the segment put on by a tool?—A. A tool, plus a block.

Q. And can you describe that tool for us, please?—A. Well, the tool for the segment surface is a concave tool designed to grind a convex surface. It is made of cast iron in many instances, and it is worked to a very accurate curve to conform with the lens chart.

Q. And if I understood you correctly the reason for this difference is that in the sale of the other, the non-Univis blanks, the particular curves you are talking about are put on at the factory before the blanks are sold to the wholesaler, whereas in the case of Univis in some instances the blank is sold in a form which requires the putting on of the curve by the wholesaler?—A. That is right.

Q. And your testimony has also mentioned the fact that the Univis Corporation has issued licenses to retailers, and that there are two types of retailers; the finishing retailer and the  
159 prescription retailer; is that correct?—A. That is correct.

Q. Can you now differentiate between the finishing retailer and the prescription retailer?—A. Yes.

Q. Please do so.—A. The finishing retailer has a complete grinding and finishing laboratory, comparable to that of the wholesaler and performs the same functions and the same grinding operations and finishing operations as does a wholesaler, and supplies the lenses through the stages of fitting and designing direct to the public.

The prescription retailer is one who may be either an optometrist, an oculist, or eye physician, or may be an optician, who secures the lenses ground by the wholesaler on his instructions of both design and focal power and delivers them to the patient. He further, in some instances, does the edging, drilling, and mounting of the lenses.

Mr. GLICKFELD. I should like to have marked for identification what purports to be a license given to the prescription licensee.  
(Marked "Government's Exhibit 6" for Identification.)

Q. I hand you, Mr. Silverman, what purports to be the form of license issued by the corporation to the prescription licensee and ask you if you identify it as such?—A. Yes.

160 Mr. GLICKFELD. I offer that in evidence, your Honor.

The COURT. It will be received.

(Government's Exhibit 6 for Identification received in evidence.)

Q. Can you explain how a prescription licensee gets his license from the corporation?—A. Well, he may get it in—the actual getting of it is merely to receive the license from the corporation. The procedure for securing him as a licensee may be a call by a wholesaler's representative; it may be a call first by a Univis service man, or it may be as a result of a direct inquiry from the optometrist, the doctor, or optician.

Q. Isn't it a fact that in the usual procedure an application is filled out by the wholesaler who is recommending the particular retailer for a license?—A. That happens in some instances; yes.



Q. Have you ever licensed a prescription retailer without such a recommendation?—A. Yes.

Q. In many instances?—A. Quite a number; yes.

Q. In most instances?—A. No; I would not say in most instances, but in quite a number of instances.

Q. In most instances is the retailer recommended by the wholesaler who is going to supply him with the lens blanks, or the lenses, if the prescription retailer is licensed?—A. In many  
161 instances he is nominated by the wholesaler who has solicited him because he is the customer of some particular wholesaler.

Mr. GLICKFELD. I should like to have marked for identification application blank entitled "Information required. Univis applicant."

(Marked "Government's Exhibit 7" for Identification.)

Q. I show you Government's Exhibit 7 for identification. Do you identify that as the application blank which is filled out by the wholesaler in recommending the retailer for a prescription license?—A. Yes.

Mr. GLICKFELD. I offer that in evidence, your Honor.

The COURT. It will be received.

(Government's Exhibit 7 for identification received in evidence.)

Q. You will notice, Mr. Silverman, that one of the questions to be answered by the wholesaler is, does the retailer maintain high standards? In the words of the application, "Does he maintain high standards of practice?" Can you explain for us what that means? What does that entail, "High standards of practice?"

Mr. TOULMIN. May it please the Court, we are now getting into a subject which I take it will be quite extensive, and I think I should do my duty to the Court and my client by directing the

162 Court's attention to the situation as to the reasons and motives and other similar opinion in connection with the granting of licenses. Our position is, we submit to the Court, that as a matter of law it makes no difference in an antitrust case what are the reasons, or what are the rules or regulations for granting the licenses. The fact that the license has been granted is the ultimate fact; whether they are good licenses depends upon the patents in combination with those license agreements and, as held by the Supreme Court in many cases, and held by the Circuit Court of Appeals of this Circuit from time to time, the right to refuse to grant for a given reason, or the right to grant for a given reason, and in either event it makes no difference because it is a right of property—

The Court. That is my own view, but this present question is limited to the meaning of the terms employed in the application blank, and to that extent the question is permissible.

Q. Will you answer the question, please?—A. Well, high standards of practice primarily concern the ability of the refractionist or optician; the type of materials used; whether he is a prospect for a high-quality lens, or whether he uses nothing but defective lenses or substandard lenses or factory culls, and that generally covers the subject.

Q. What does the prescription retailer do to the Univis lens?—

A. If he is an optometrist he has refracted the patient's eyes,  
163 prescribed Univis, designed the size, shape, contour of the lens to conform with the patient's peculiar facial characteristics; he has designed the size, heights, and positioning of the reading segment to conform to the patient's particular vocation and other personal habits, and he has sent those instructions, after he has planned and designed the lenses, to a laboratory for completion. Then, when they are received back he further fits them to the patient's face. He computes the angle of the lenses to give that vision, and that covers it.

Q. Mr. Silverman, will you please relate what you mean by the high standards of practice to the functions performed as you have just testified, functions performed by the prescription retailer? What is the relationship between the high standards of practice and the refraction of the eyes, refraction of the eyes being one of the things which the prescription licensee does?—A. Well, ability to refract properly would be the direct connection. But the connection to the mechanical operations would be one of education in most instances on our part. That is, a man that will be trained to properly design and fit Univis, which is different, of course, than the designing and fitting of other bifocals.

Q. Do I understand your answer to be that a man must have high standards of practice in order to be instructed in the dispensing of Univis lenses? Am I correct in my  
164 understanding?—A. That is not entirely correct, no. It is our desire, and this might be helpful, it is our desire to have as many prescription licensees as possible to secure throughout the entire United States, and we have an educational program to go through. Now, obviously there are certain types of retailer practitioners who have no interest in Univis because they only handle factory culls or second quality or third quality lenses, and we do not manufacture or sell a second quality lens. I think perhaps we are the only manufacturer in the United States that has never marketed or sold a sub-standard lens. If a man has no interest in high quality lenses, and does not maintain that type of

practice, he would be no prospect for Univis by his own method of operation, and that is determined very quickly.

Q. Do you instruct or advise the wholesaler who fills out this application that one of the meanings to be given to high standards of practice is whether or not the applicant has previously used first quality, second quality, or third quality lenses?—A. That would go to make up the information, I would say, that would enable the wholesaler to answer.

Q. And what other information would go to make up the answer that the wholesaler makes?—A. Well, the wholesaler, of course, serves the retailer with his entire needs, and if a retailer is a  
165 man of good standing, a man that conducts a business along proper ethical lines—

Q. May I interrupt you there again: Can you explain what you mean by "good standing"?—A. Well, I mean integrity, primarily.

Q. You mean, is he an honest business man?—A. That is right.

Q. Does he pay his bills?—A. Well, that is not necessarily the type of honesty I mean.

Q. I would like to find out what type you mean.—A. The type of integrity I mean is, is he simply selling specs, or is he attempting to render a service to the public in giving them complete service in connection with optical vision.

Q. What does that mean, or what does it include?—A. Well, it includes his refracting ability; it includes the fact that he thinks in terms of the best lens for the patient, and the best possible service in connection with those lenses.

Q. Do you expect the wholesaler in answering that question to investigate the ability of the prescription licensee to refract eyes?—A. No: not entirely. You see, we do not—I mean we are not guided, or rather, putting it this way, we do not follow a recommendation of a wholesaler entirely because he may be very prejudiced for some reasons and send in an application.

166 Our own service man, as often as is physically possible—these men travel the United States all the time and they call on local prospects; as a matter of fact we go much further than that; we address the student bodies in all the universities. We are on the regular lecture studies and educate them to the use of better lenses, as we try to develop them to think in terms of optical service, in many instances long before they go into practice.

Q. I understand that. You have just said that. You do not rely entirely upon the wholesaler's recommendation, but would the corporation consider the licensing of an applicant who did not receive a favorable recommendation from the wholesaler?—

A. Oh, yes.

Q. Then what is the purpose of the recommendation by the wholesaler?—A. Well, primarily the wholesaler is a supplier of lenses and materials to the retailer and he is out soliciting business. Now, in many instances, he may have a customer that might be a pretty good customer of his. He uses a lot of their merchandise, and the retailer on a certain day might say, "Well, I think I would like to have a Univis lens." The wholesaler probably feeling in his heart that the man would never sell any Univis, because he only uses the second and third quality lenses would, for the purpose of avoiding any discussion, make out an application for him and send it in as his service man. I mean, after all, as his wholesaler, so very often those applications  
167 might come in. Now, our men will call on as many as it is physically possible to call upon, as quickly as possible, and in most instances before the license is granted; not in every instance, because it is not physically possible. We have only six men that cover the United States and Canada.

Q. In this instance, where your own men visit the retailer, what is the purpose of that visit?—A. The purpose of the visit is to try to interest the retailer first in the prescribing of our multifocal service.

Q. You try to sell him on Univis?—A. That is right, and if he is interested, then to try to educate him in the use of Univis, which is different than the bifocal service he has previously used.

Q. Do your men investigate his ability to refract?—A. Well, I would not say that, no; only to the extent that a man is a graduate of a recognized university and has proper certificates, and so on.

Q. Do they investigate what type of merchandise he has been dealing in previously?—A. Yes.

Q. Do they investigate the prices he has been charging?

Mr. TOULMIN. If the Court pleases, I hesitate to interrupt again, but I think we are pursuing this line of investigation that goes to this entire question I raised a moment ago of the reasons.

Now, for instance, on the question of price: So recently as  
168 in the Socony-Vacuum case, the Supreme Court held that is an element, the reasonableness of price, that has no part in an antitrust case whatsoever. The price may be reasonable and the combination or conspiracy illegal, and the price may be unreasonable and the conspiracy may be entirely legal. As the Supreme Court said by Mr. Justice Douglas, such proof would lead to the emasculation of the antitrust laws.

The COURT. I think the subject has been pursued sufficiently.

Mr. GLICKFELD. May I point this out, your Honor: In all conspiracy cases, especially under the antitrust laws, I think the



Government should, and is entitled to, look into the intent and the motives of the acts of the parties. Now, in the Socony case the defendants tried to raise the defense of the reasonableness of the prices that were being fixed and the court in that case held that price-fixing was illegal, per se.

The COURT. Per se, providing it was not within the control of the patent monopoly. That was the express statement made by Mr. Justice Stone.

Mr. GLICKFELD. In this case, your Honor, we are not attacking the licensing scheme itself, the pieces of paper. What we are attacking is a method of distribution; how the goods are sold from the manufacturer to the wholesaler, and the salesman to the retailer, and as part of that distribution there is a licensing scheme, but another part of that distribution is the reasons why and the motives and the intent for the licensing of certain individuals, and the reason and intent and the motives for setting up this whole licensing scheme.

The COURT. You can prove what they did, and the intention or motive may be inferred from acts committed, but beyond that I don't think, certainly in a civil suit, you may proceed.

Mr. GLICKFELD. Shall we be precluded then, I mean at the present moment, from offering evidence to show the reasons why certain retailers were refused licenses, or the reasons why certain wholesalers were refused licenses?

The COURT. As I see the issues at the moment my disposition would be to exclude an offer of such testimony.

Mr. GLICKFELD. Even though there may be some indication that this would show the intent of the act of the alleged conspirators in the alleged conspiracy?

The COURT. Yes. As I read these pleadings the cardinal, critical question is whether the acts of these defendants are within or beyond the provisions of monopoly. Now, they assert as a defense that what they do is within the control of the patent monopoly. Your allegation is that they have been doing things beyond that which the monopoly conferred and that is the sharp issue in this case.

170 Mr. GLICKFELD. May we have an opportunity to prepare a legal argument on that?

The COURT. Yes; if you want to brief the point, you may.

Mr. GLICKFELD. Thank you.

The COURT. But it must be brief.

Q. Mr. Silverman, do you know whether the Univis Corporation gave any instructions or advice to the wholesalers concerning the recommendations of retailers to be licensed by the corporation?



Mr. TOULMIN. If the Court pleases, isn't that pursuing along the same line as the question asking for reasons?

Q. (Question read.)

The COURT. I will overrule that objection.—A. I am not sure whether any written instructions are given. Perhaps you can refresh my memory. It might be the Lens Company.

Q. I will try to refresh your recollection then. I will rephrase my question to include the Lens Company.—A. I think it is the Lens Company, but I am not sure whether it is the Lens Company or the corporation or both, but I will be glad to have my memory refreshed.

(Document marked "Government's Exhibit 8" for identification.)

171 Q. I now hand you Government's Exhibit 8 for identification, and ask you to say whether you can identify that.—

A. Yes. This appears to be instructions re application for Univis retail franchise.

Q. And do you identify that as the instructions sent out to the wholesalers by the Univis Corporation or the Univis Lens Company?—A. Well, I cannot of my own knowledge say that they send these out to all wholesalers. Perhaps someone from the Univis Corporation could better answer the question. I presume they are sent out or else they would not have been printed, but I cannot of my own knowledge say that.

The COURT. You are offering this?

Mr. GLICKFELD. I am.

The COURT. It will be received.

The corporation referred to is the Univis Corporation and not the Lens Company.

The WITNESS. That is right.

(Government's Exhibit 8 for Identification received in evidence.)

Q. I direct your attention, Mr. Silverman, to the second paragraph of the document just offered in evidence and ask you to read that paragraph.—A. To myself or out loud?

Q. Either way.

The COURT. I can read it.

172 Mr. GLICKFELD. Well, to yourself, then.

The COURT. Suppose you frame a question with respect to it, then.

Mr. GLICKFELD. I intend to give the witness an opportunity to read it, your Honor.

Q. Have you read it, Mr. Silverman?—A. All right. Yes; I have.

Q. You will notice that this paragraph states, "That retailers whose standards and methods are such as are commonly covered

in the trade by the term 'price-cutters' are not eligible." Will you explain what the term "price-cutters" means?

Mr. TOULMIN. If your Honor please, may I renew my objection, and I do so renew it, that this is getting into the reasons again of granting licenses or not, and I think if we could confine the case to the ultimate facts and the issue here, whether these are good licenses or not, we would probably solve it.

The COURT. I will overrule the objection to this specific question. I think we all know what price-cutters are.

Mr. GLICKFELD. Less there be any misunderstanding—

The WITNESS. I should like to—

The COURT. Go ahead.

173 The WITNESS. I think the term "price-cutters" we all know. We all know what price cutters are, but the term "price cutter" in the optical business is very often a misnomer. I prefer to call him a price raiser rather than a price cutter, because that includes that group that advertise low-priced glasses, and the experience that we have and the information that we have indicates that in most instances they advertise a low price, and handle a poor quality of merchandise and charge higher prices than the most legitimate and highly ethical establishment in the city for similar merchandise. In many instances they charge much higher prices for inferior types of merchandise, so I prefer to state a price cutter is not always one who takes a piece of product and cuts it, but rather one who gets a much higher price but uses bait advertising to get people into his establishment, and people like that are not eligible because primarily they would not have interest in Univis other than to duplicate an occasional broken lens that might pass their way.

The COURT. In other words, you do not restrict the term to the narrow meaning of one who takes a trade-marked article, which uniformly sells at a given price, and slashes that price?

The WITNESS. No, sir. I would not restrict it entirely to that, your Honor.

174 Q. And by not restricting that entirely you mean it does include that type of retailer who does go below the prevailing price and, in addition, it includes the bait advertiser?—A. I presume they are one and the same in most cases, Mr. Glickfeld; one that would do one thing would no doubt do another. That is what I meant by integrity before in their dealings with the public.

Q. Then is it a policy of the Univis Corporation not to license price cutters?—A. As I have explained the term, yes.

I might further elaborate, if you wish, to this extent: That in order to prove what I mean by a price cutter that always being one who cuts prices, we had a call from a man who owned a

large chain of retail stores; that does a lot of price advertising, bait advertising. He wants a Univis license. We told him that we did not think he was eligible for Univis. He said, "Oh, I would not cut your price. As a matter of fact I employ salesmen. My men would get \$25 or \$30 for a product like Univis and not \$16. I will guarantee you anything up to 2,000 pairs a month if you license us." We did not license him. He is known as a price cutter, but frankly he gets higher prices as a result of having high-pressure salesmen in his establishment than any legitimate establishment that sells quality merchandise.

175 Q. But it is the established policy and has been, for the Univis Corporation not to license the price cutter?—A. As I interpret price cutters.

Q. And that is the interpretation given to the term in the trade, so far as you know?—A. So far as I know, yes.

Q. Is it also a policy of the Univis Corporation to cancel licenses of price cutters, or is it merely the policy not to issue the license in the beginning?—A. No, I would not say that it is the policy. I mean, we would prefer that they never be licensed, but sometimes through lack of information they might be licensed. That might happen. I mean a licensee in a place where our own representative could not have called and we did not have complete information or we had misinformation.

Q. So that once the corporation found out that the licensee was a price cutter, his license would be taken away from him?—

A. In some instances, I would say that his license would. I don't know the exact details of whether every one is taken off; certainly not for just one reason. There may be any number of reasons or one or more contributing reasons, but I would say as a matter of policy we prefer not to have that type in our picture.

Q. Would you also say that as a matter of policy that once having found that fact you would eliminate him from your  
176 picture?—A. That would be the interpretation of policy, yes, that I would prefer.

Q. Is there a licensing committee either in the Lens Company or in the Corporation which considered applicants for restriction licenses?—A. Yes.

Q. And who is on that committee?—A. Well, Mr. Brown in the Corporation, the sales-manager, Mr. Hancock, and every often myself.

Q. And what is the function of that committee?—A. To consider license applications and pass upon them.

Q. And do you consider all applications for wholesalers, finishing retailers and prescription retailers?—A. They are all considered before they are passed, yes; not always by the same individuals.

Q. So that we are to understand that when an application is made, whether it is by a wholesaler, by a finishing retailer, or by a prescription retailer that the application goes over to someone of several members of the licensing committee?—A. Yes. Of course, in the case of a wholesaler there are many other factors involved and several calls would have been made upon him in order to try to sell him.

Q. And what does the license committee do when it considers an application?—A. It takes all of the information that is available, considers that information in the light of our policy and passes upon it.

177 Q. And the information would include, would it not, the information found on the application filled out by the wholesaler in the case of the prescription licensee applicant?—

A. The Prescription licensee applicant that came from the wholesaler. That would be a part of the information.

Q. And the other information would come from the investigations made by your own salesmen or service men?—A. Or a call that they may have previously made.

Q. Do you ever seek information along those lines for the purposes of determining whether or not a license will be granted, seek such information from already existing licensees?—A. I think in some instances.

The COURT. I happened to see in Exhibit 4 this paragraph, and I just wanted to ask you about it; it is a related inquiry: In Exhibit 4, which is the form of contract which you make with distributors, I find Article 7 provides that "The licensee further agrees to notify the corporation of any violation on the part of any jobbers or other licensees of the agreements respectively made by them with the corporation, and to assist the corporation in all possible ways in securing evidence against, and enforcing its agreements with such jobbers and licensees."

178 That in effect makes the licensee an investigator in respect to what you regard as their trade practice?

The WITNESS. Yes, the source of information.

The COURT. Now, the next paragraph I wanted to ask you about is 8:

"It is further agreed between the parties that the subject matter shall only be sold under the name 'Univis' and that no other lenses and/or blanks will be sold by the ( ) company under the name 'Univis'; and that ( ) company will cease to use the name 'Univis' upon termination of this contract, and only use the name 'Univis' on the subject matter of this contract."

Oh, I understand it now. I did not quite get it at first.

Q. You do not seek such information in all instances where an application is made?—A. No; it is not necessary. If our salesmen or our service men are in the territory, he will make a personal call on the licensee and go over the complete technical story of Univis with him and then determine through his judgment whether the man is interested sufficiently to warrant a license.

Q. In those instances where you seek information from existing licensees, what kind of information do you seek from them?—

A. Well, the general standing of the man, covered by the qualifications that I referred to before.

179 Q. Going back again to Exhibit 4, which his Honor just called to your attention, you will notice that paragraph 5 requires the wholesaler licensee to keep exact and full accounts of all sales and the prices at which they are sold, and the names of the purchasers, firms and corporations to whom they are sold.

The paragraph also provides that the corporation or its duly accredited representatives have a right to examine the books at reasonable times and take copies thereof.

Will you tell us the purpose of that particular clause?—A. Yes; gladly. Our entire sales development program is based upon information from wholesale licensees. We have at Dayton a very elaborate sales system that is set up, wherein each license has a card, and on that card is the record of his usage of Univis as a guide to the work of our field service men and as an aid to creating additional business and new business, and to the establishing of quotas from the standpoint of our own sales organization; for the purpose of setting up our own anticipated production schedules; we have a very complete sales record there of those wholesalers that will assist by sending in a complete list of usage, and from retail licensees where we have received wholesalers' reports, we have a card for him to show just what he uses each

180 month, and then our salesmen, of course, try to develop that man to use more Univis, and we base our sales quotas on that report, and it enables us to direct the activity of our service men, where, for example, a man being a good licensee, having used a considerable number of Univis for a number of months, and all of a sudden you see he uses nothing—well, we will direct one of our service men to call on that man promptly to see what his difficulty is. He may have had some trouble.

Q. That would have relation to the reports that are being sent in?—A. On every pair that is sold, that is right.

Q. Would that also have relation to your service men going in and investigating the books and records?—A. I do not think



that has ever been done in the history of our business that I know of.

Q. I asked you the purpose for putting that in the contract?—

A. I believe that is better answered by our counsel who drew the clause. I do not know the legal purpose.

Q. You are an officer of the corporation.—A. Yes; but I am not a lawyer.

Q. And I am asking the question because you indicated in your testimony that you determined policy.—A. Yes, but as far as I

know that is a part of a legal contract, and I do not know  
181 the reason for putting that in. It has no commercial value so far as I am concerned in directing the policies or activities of the corporation. My answer to you would be that I think that is a regular legal form for licenses. I do not know.

Q. Isn't it a fact that your receiving these reports and your having the right to inspect the records of the wholesaler is used by the Corporation and/or the Lens Company to police the sales of the wholesaler in order to determine to whom he is selling and at what price he is selling?—A. The latter, no. I do not think it has ever been used for that purpose. The first part of your question, yes. In other words, it is definitely used to determine to whom he is selling and the amounts that he is selling. And to give us the information that enables us to develop that business and build it up, and also to determine whether he has sold to someone who is not on the authorized list of the corporation.

Q. How do you determine whether or not a wholesaler is selling the lenses at the price fixed by the corporation?—A. Well, frankly, I never determine that unless there is some complaint of some sort. If there is a complaint we will attempt to determine that factor by asking.

Q. In attempting to determine that factor do you ever look at the books and records of the wholesaler complained against  
182 in order to determine what his records show concerning his selling prices?—A. Those instances are so rare that I would say that I have never looked at the books of a wholesaler.

Q. Do you know whether any wholesaler's books have been looked at by any representative of Univis?—A. I cannot answer that, no.

Q. You do not know?—A. I do not know of my own knowledge.

Q. Is there any policy either by the corporation or the Lens Company determining the number of licensees to be granted licenses within particular localities?—A. No; no fixed policy there.

Q. Would you say that it is the policy of the corporation to grant as many licenses as possible?—9. As many as possible consistent with our policy.

Q. By "consistent with our policy," you mean eliminating the price-cutters?—A. I mean the type of distribution—

The COURT. That is embodied in the various license agreements?

The WITNESS. That is correct.

Q. Would you say, Mr. Silverman, that it is the policy of your company, either the Lens Company or the Corporation, to license and to sell only to the independent wholesale and retail groups in the industry in order to guarantee strict adherence to price control and in order to guarantee a fixed profit for the licensees?

183 The WITNESS. What is the question?

Mr. GLICKFELD. Will you read it?

Q. (Read.)—A. No; that is not true.

Q. Would you say, Mr. Silverman, that it is the policy of your company to execute license agreements and to distribute your lenses under the licensing scheme in order to guarantee to wholesalers and your retailers that they will make a certain fixed profit and that that guarantee is used by the company in persuading the wholesaler and the retailer licensees to accept the licenses?—A. I should say that that is definitely a consideration by the wholesaler, the fact that he knows he is to be paid and to make a profit on the work that he performs.

Q. I am afraid your answer is not exactly responsive—A. I am sorry.

Q. I asked you, is it the policy of your company to use that guarantee in persuading the wholesaler to accept or to enter into the license agreements?—A. Yes; that is a part of our sales presentation.

Q. And isn't it a very important part of your sales presentation?—A. Well, I would not say any more important than many other phases, or as important as many other phases. I think a wholesaler can best answer that.

Q. Isn't it a fact that it is a part of the policy of the corporation and the Lens Company to sell to the wholesaler not only the actual lens blanks but to also sell him a protection from competition and a protection for a certain stated profit in the resale of the goods?—A. The latter part I would say is correct, that there is a protection for uniform profit, but certainly not a protection from competition, because competition is extremely keen with our wholesaler distributors, extremely keen.

The COURT. We will take a recess now to two o'clock.

(Recess to 2:00 p. m.)

JACK R. SILVERMAN, resumed the stand.

Direct examination continued by Mr. GLICKFELD:

Q. Mr. Silverman, at the end of your testimony this morning you had indicated, based upon the Exhibits Nos. 7 and 8, that the reason the Exhibit 7, which is the information application—the reason that that exhibit required the answering of the question “Does he maintain standards of practice?” was to enable the Univis Corporation to ascertain the ethics of the particular applicant; and I think you also testified that by that you meant it had something to do with whether or not he was a price-cutter or whether or not he dealt in second-quality or first-quality lenses. And I believe your testimony also indicated that by “price-cutters” as the expression was found in Exhibit 8, which are the instructions concerning applications for Univis retail franchise, it was your understanding that price-cutters included those retailers who sold below the established price and those who entered into bait advertising. Now, is my understanding of your testimony correct?—

A. Substantially so, yes.

Q. If that is so, Mr. Silverman, can you explain why Exhibit 7, which is the information application, not only asks the ques-  
186 tion “Does he maintain high standards of practice?” but also asks the question “Does he advertise? If so, does he advertise prices or that his prices are lower than average competition?” Can you explain why the application itself differentiates between price advertising and price cutting, according to your interpretation, whereas the use of the expression “price-cutter” in your instructions for application according to your interpretation includes both?—A. Yes. The first question, “Does he advertise?” is a matter of information for sales and advertising department. You see, we advertise, and we subscribe very strongly to an advertising and educational program. We have an advertising agency employed by the year. They develop display and demonstration articles; they make newspaper maps; they make consumer folders; they make display cards. And if the man is a man that does advertise, that is, advertise truthfully, we will say, he is a prospect for our advertising material of which we have quite a variety.

In the one case there, then, that is a question of information which enables us to govern the number of display cards or demonstrators that we need to purchase.

Some men do not use any advertising material of any kind. Some are the type of petitioner that uses no display cards.

187 Some offices of doctors, for example, they would not have any type of display card or anything that bears on commercialism in their offices. We make that record so that we know whether to order 10,000 cards or whether to order 2,000 or 1,000, and so on. That is the answer to the first part of the question, "Does he advertise?"

The second part, "Does he advertise prices?"—is that it?

Q. Yes; that is correct.—A. That refers to the bait advertising practitioner, of which there are quite a number, unfortunately, throughout the United States.

Q. And the third question is that his prices are lower than average competition?—A. Yes. That is the procedure of the bait advertiser. He always advertises something for less and then when he gets them interested he charges them any price that the tariff will stand.

188 Q. Isn't it a fact, then, that so far as your application is concerned, you differentiate between a price cutter, that information being indicated under the question, "Does he maintain high standards of practice," and the retailer who bait advertisers, which is indicated in the answer to the question, "Does he advertise prices or that his prices are lower than average competition"?—A. There may be some that do not advertise bait prices but carry on the practices that bait advertisers do, such as the purchasing of inferior quality merchandise and selling at higher prices. That covers the one phase. The other advertises lower prices than others which is the bait advertising of which you have seen probably many here in the City of New York.

Q. Then I again ask you, isn't it a fact that for the purposes of inquiring concerning whether or not an applicant is to be licensed, you try to determine at least two things: One, is he a price cutter; two, is he a bait advertiser?—A. Yes. Those are two things among others that we determine.

Q. And you differentiate between those two things—

The COURT. I think that we have pursued that enough. We must get on with some more speed. It has been covered it seems to me very fully now.

189 Mr. GLICKFELD. I should like to have marked for identification what purports to be the finishing licensee contract. (Marked "Government's Exhibit 9" for identification.)

Q. Mr. Silverman, do you identify that agreement as the form which is executed by the finishing licensees of the Univis Corporation [handing Exhibit 9 for identification to witness]?—A. Yes.

Mr. GLICKFELD. I offer that in evidence, your Honor.

The COURT. It will be received.

(Government's Exhibit 9 for Identification received in evidence.)

Q. I think your testimony indicated this morning, Mr. Silverman, that it was the general policy of the Univis Corporation to license as many licensees as possible without any restrictions, except that you did not desire to license price cutters. Is my understanding correct?—A. Well, substantially so.

The Court. I suggest that you should not spend any more time framing a resumé of the testimony that has been given. We will not make much progress if that is continued.

Q. Is it not a fact that it is the policy of the Univis Corporation to guarantee to the licensee a fixed profit in the sale of the  
190 Univis merchandise?—A. A differential between cost and selling price is established. That does not necessarily imply a fixed profit, because overheads are different.

Q. Isn't it the policy of the Univis Corporation to limit the number of licenses issued in each class, so that licensees will not compete with each other in given localities?—A. No.

Q. That has never been the policy of either the Univis Corporation or the Univis Lens Company?—A. The Univis Lens Company, prior to the formation of the corporation, prior to 1931, had a single retail licensee for each community, due to limited production facilities. That was the very beginning. We are going back now to from 1927 to 1931. We had a new product and we had a policy wherein we selected the finest and most outstanding retail establishments in each city and they had an exclusive license from us for a particular territory or city wherein they distributed to their own patients. Now, that is the Lens Company, you see.

Now in reference to the Corporation, that is an entirely different matter. That began in 1931.

Q. So that the policy previously carried on by the Lens Company was discontinued after the Corporation came into the picture?—A. After we broadened the distribution and increased production facilities to establish the practicality  
191 of our product.

Q. Isn't it a fact that it is the policy of the corporation to license only 20 per cent of the registered retailers, and for that reason eliminate 80 per cent of the Univis licensees' competition or potential competition?—A. No; that is not a policy. I think I know what you are referring to. As a salient feature at the time of our development there was a point wherein we had what appeared to be 20 per cent of the registered men, and we used that, our advertising department used that as a selling point to the licensees to stimulate activity, but it is not a policy because as a matter of fact it does not exist today.

Q. When did that discontinue to exist?—A. Well, it automatically discontinued when we got more than 20 per cent of licensees. The statement was made and used in advertising. I



am not too sure of that, but it is not a matter of policy because I think we have pretty close to 50 per cent of the eligible prescription licensees.

Q. And do you use that for advertising purposes, or did you within recent times, or did you discontinue that for advertising purposes some time ago?—A. Well, I am afraid I cannot answer you definitely, but I presume that if there is an advertising on it you would be able to have that advertising material. I do not know for sure. Personally, I do not use it in my personal  
192 contact with the trade, but there may be something in the advertising department.

Q. You do not recall ever having used it in your communications with retailers?—A. Oh, yes; oh, yes; I do.

Q. You mean you used it fairly often?—A. I do not recall using it recently; but I do recall using it in years gone by.

Q. And what was the purpose for your use of the phraseology that it was the policy of the company, or that the company licensed only 20 per cent of the registered men and that for this reason 80 per cent of the Univise licensees' competition was automatically eliminated?—A. To stimulate activity of the licensee.

Q. And wasn't it also used in order to keep the licensee in the licensing system, so that he would not be discouraged or give back his license agreement and discontinue the sales of the Univise licenses?—A. No; I would not say that had anything to do with it at all. That does not seem logical.

Q. Isn't it a fact that one of your selling points in getting retailers to accept a license is your guarantee to him that only a small percentage of the retailers will be licensed, and therefore a large percentage of his potential competition will be eliminated because of that?—A. I would not say that that is a major selling point; no. You see, the major selling point today in the Univis

Company is selling a refractionist or a potential licensee  
193 on the quality of our product, on the completeness of our service. If a salesman or a service man states that a limited number are licensed that has further sales value, I presume, and that is a fact. There are a limited number, limited in that everybody is not licensed, while it would not be physically possible to license everybody because everybody would not be interested in our product because there is competition in the bifocal field.

194 Q. Do you mean to indicate that the company will license every retailer who is desirous of receiving a license?—

A. If he conforms to our policy; yes.

Q. As previously stated?—A. Yes.

Q. The answer is yes?—A. Oh, yes; the answer is yes.

Q. Now, is it true that over the period of years the Corporation or the Lens Company has turned down more business than it has

accepted, or that it has refused to license more applicants than it has actually licensed?—A. Well, I recall a statement of that sort in a letter several years ago that specifically dwelt with an instance that I recited this morning, wherein we turned down a potential customer that offered to use a minimum of up to 2,000 pairs per month, and by turning that down we refused more business than we had at the time in the territory. But I would not say that that is true as a general statement. It may have been indicated in the letter. What we try to convey is that we do secure all of the business that we can in conformance with a policy, and we try to protect the better man against the bait advertiser with whom he is not in a position to compete with because he does not know that method of doing business.

Q. Wouldn't it also include the protection of that better  
195 man against the price-cutter; not only against the bait advertiser but against the price-cutter?—A. Well, that is the same man in my interpretation of "price-cutter," because I think we are using the term "price-cutter" in a narrow sense. There are no angles in the optical industry of that type in the retail end; they are simply trying to sell something cheaper to the public. The legitimate places, the better establishments that give the best service, in the long run charge the lowest prices.

Q. There are certain price advertisers who are not price-cutters, and certain price-cutters who are not price advertisers?—A. Price advertisers that are not price-cutters? No; I do not believe there is a price advertiser that I know of that is not the price-raiser that I spoke of this morning.

Q. Then are all price-cutters likewise price advertisers?—A. No; I do not believe they all advertise. I do not know that. That would be difficult to answer because you are covering the entire United States, and I do not see all the advertising that goes on.

Q. At least, in all instances where the price-cutter is not the price-advertiser, it is the policy of the company and the corporation to protect the ethical man against those price-cutters?—A. To go a little further, to protect the ethical man, but primarily to protect the public. That is where our quality picture enters  
196 into it, because they are sure they are getting one quality of Univis only, and that, the very highest quality. They have never gotten a substandard Univis lens knowingly.

Q. How do you explain that the public is protected by the policy of the Corporation and the Lens Company not to license price-cutters?—A. Well, that is a very broad question, but I will try to give you the situation: A patient knows two things when he goes into a Univis licensee for a pair of Univis lenses, and he will find out two things. First, that he has secured the best quality lens that

he can buy, regardless of price. And secondly, that he will pay a price consistent with a high type of service, and that price uniform throughout the United States. So that Mrs. Jones does not pay \$20 for a lens and Mrs. Smith pays \$6. But primarily the guarantee of a single uniform high quality product, and the assurance of complete service as a result of that product, is the thing that the public receives when they purchase the Univis lens.

Q. Now, you have mentioned two things in which the public is protected: One, uniform price; and the other, good quality. How does the retailer affect the quality of the lens which is finally delivered to the patient?—A. How does he affect it?

197 Q. Yes; how can he make a bad quality Univis lens to deliver to the patient?—A. Well, I am glad you asked that question, because the finest lens made under the finest grinding technique can be ruined to such an extent by an incompetent retailer and it would be of no value to the public at all. For example, I can take the best ground pair of Univis, wherein we put the best that there is to put into lenses in our plant; the wholesaler has done likewise; the retailer through incompetence will design the lenses improperly, position the lenses, and order the lenses in his designing and planning so that the segment is in wrong position, wrong height, wrong decentration; and that pair of lenses would render, in my judgment, worse service than a poor pair of lenses properly designed by the retailer. The retailer's function, in my opinion, is of vital importance.

Q. In other words, if the retailer did not make a proper prescription, didn't make a proper refraction job, then the patient might be harmed?—A. No; you see, you are confusing two things: It is not refraction. Refraction is examination of the eye to get focal power. That is one phase. That has nothing to do with the mechanical operation which I am speaking of, the designing and planning of the lenses themselves, the positioning of segment.

Q. What is there about designing of the lens which  
198 a price-cutter does badly and an ethical man does correctly?—A. Well, I would say that the difference primarily is one of competence in most cases, because in the one case the one man—at least our experience with the ethical man is that he studies every phase; every possible phase of application. He takes P. G. work constantly. He attends meetings where he is educated to the use of these better things, such as our compensation feature in connection with vertical imbalances. He is interested primarily in doing a good service job. The merchandiser, the bait advertiser is strictly commercial; he does not go into that phase at all. He is not primarily interested in it. I am not saying that he might not in some instances be quite competent if he

applied himself, but it is not his practice to apply himself, as a rule, because he is interested more in the merchandising of spectacles.

Q. You are referring, are you not, to the designing of the lenses?—A. That is right.

Q. And not to the writing of the prescription itself?—A. The designing is a part of the prescription.

Q. What does the retailer do in designing the lens? Specifically, what does he do?—A. First, he takes pupillary distance—

Q. You mean he measures the distance between the pupil of one eye and the pupil of the other eye?—A. Yes.

199 Q. That is merely a measuring procedure with a ruler, is it not?—A. With a ruler, or with a mechanical device built for that purpose.

Secondly, he would measure the pupillary distance of each eye separately, because some people have one eye that perhaps is crossed slightly, or one eye that turns out. Obviously, if you have such a patient and if you put both lenses with the segment in the same place, the patient, when looking down to read, would only be able to see through one eye, and the other segment would be rendered useless.

Q. And that, too, has to do with measuring?—A. Yes; the measuring is a part of the first operation there.

Now, then, the next thing is to determine the vocation of the patient; to determine his reading habits; to determine his requirements for bifocal segments.

Q. And what do you mean by that, Mr. Silverman?—A. Well, that is to say, presuming that a man works on a linotype machine, if you simply order one pair of Univis bifocals with the focal power, and stop right there, that man in all probability would have a pair of lenses that would not be suited at all for his work. The man with a linotype machine before him might require a trifocal. He may require a lens with a segment pretty well toward the center of the lens. So they determine that.

200 Then there is the matter of determining the reading habits. Some people might read well down on their laps. Others may have a habit of reading up higher. Some may converge more than others; their eyes converge more than others. It is necessary to determine all of these factors and then proceed to design and plan your lenses so that those segments will conform to that design, and so that when they are finally given a finished pair of glasses, the patient can get binocular vision and get the maximum efficiency from their lenses.

I might illustrate further: I have personally seen of our very finest lenses that rendered a patient no service at all because



of improper designing. In other words, they were set in a position where, when the patient used them for their normal operation, they secured a prismatic effect that simply caused headaches and strain and one thing and another.

I do not want to elaborate too much unless you desire me to.

Q. Then so far as your company is concerned the price-cutter does not properly measure the distance between the two pupils of the eye—A. No; I would not say that.

The COURT. I do not see how such a thing follows from what the witness has said at all.

Q. Well, as I understand your testimony—

The COURT. Quite conceivably, one who does not cut prices might not know how to take the right measurements.

Mr. GLICKFELD. Naturally; and that is what I was getting at.

The COURT. Well, you do not have to develop that. It is a matter of argument, and everybody will concede it.

Q. Does the Univis Corporation and Lens Company carry out any sort of a system whereby the license agreements are not violated, or if they are violated, that the cancellations ensue?—

A. I am afraid I do not understand the question.

Q. Let me put it this way: Once having executed the agreements with the wholesalers and the various retailers, how does the Corporation and Company determine that the terms of those agreements are being carried out by the wholesaler and by the retailer licensees?—A. Well, our men, our service men are constantly calling upon licensees throughout the country to develop their business and to educate them to the complete service that we have for them, and constantly strive to build up their practices. That is a regular function of six men who travel the United States all the time.

Q. So these men not only sell goods—A. They do not sell goods, actually. They never write an order, really. They do educational and promotional work almost entirely. I would say that was 98 percent of their work.

202 Q. Then 2 per cent of the work—A. Probably writing the order, an original order, you see.

Q. But some part of their work is given over to determining whether or not the license agreements are being carried out by the wholesaler and the retailer licensees?—A. Well, possibly, on the basis of instructions based upon a complaint of improper service, or something of that sort, a salesman or a service man might be designated to investigate. To that extent they would use their time occasionally.



Q. And when you do receive complaints about violations, do you employ the services of just these six men to investigate the complaint or do you use other means to determine whether or not the complaint is a valid one?—A. As far as I know, we use the six men. I do not know whether they, in turn, whether they have any other method. I just do not know what sort of complaint you are referring to. Perhaps you can be a little more specific.

Q. Well, a complaint that a wholesaler or retailer was selling under the prescribed prices. What would the Lens Company or the Corporation do in such an instance?—A. Well, if the complaint was made, A, with regard to a wholesaler, no doubt the complaining party would produce an invoice to substantiate the complaint. The complaining party would no doubt be  
203 another wholesaler, I imagine; another wholesaler would perhaps have submitted an invoice as evidence that the violation had occurred.

Q. And in the case of the retailer?—A. In the case of the retailer, I presume it would be wherein a patient had made a complaint, gone back to another licensee and said that they purchased their lens at a price other than the established price.

Q. And has the company or the Corporation any policy concerning what they will do when they finally determine that there has been a violation of the contract?

The COURT. Let me remind you that under the terms of the contract the licensor may cancel.

Mr. GLICKFELD. I am trying to determine whether or not they actually do make such cancellation.

The COURT. What difference does it make? The utmost right granted to the licensor is that of cancellation by the terms of the contract. We may assume that they proceed in pursuance of the right granted.

204 Q. Is it true that some time in 1940, the Univis Lens Company, issued certain fair trade agreements with the wholesaler and retailer licensees?—A. 1940? I believe it was 1940. I am not sure of the date, but about a year or so ago.

Mr. GLICKFELD. I would like that agreement marked for identification.

(Marked "Government's Exhibit 10" for identification.)

Q. Mr. Silverman, is that a conformed copy of the fair trade agreement executed with the wholesaler licensee?—A. Yes.

Mr. GLICKFELD. Your Honor, I would like to submit this with the understanding previously arranged between counsel, that we can submit an unexecuted form. You will notice this form is an executed one.

The COURT. Yes.

Mr. GLICKFELD. And I offer it in evidence.

Mr. TOULMIN. No objection.

(Government's Exhibit 10 for identification received in evidence.)

Mr. GLICKFELD. I should like to have that document marked "Government's Exhibit 11" for identification.

(Marked "Government's Exhibit 11" for identification.)

205 Q. Mr. Silverman, can you identify this piece of paper as the letter of transmittal which accompanied the fair trade agreement which you have just identified?—A. Yes.

Mr. GLICKFELD. I should like to offer that in evidence with the same arrangement; that we receive an unexecuted and conformed copy to submit.

The COURT. Yes.

(Marked "Government's Exhibit 11" in evidence.)

Q. Was it the purpose of the Lens Company and the Corporation to incorporate the fair trade agreements which you just identified as part of their method of distribution along with the previously existing license agreements?—A. Yes.

Mr. GLICKFELD. I ask to have this finishing retailers fair trade agreement marked for identification.

(Marked "Government's Exhibit 12" for identification.)

Q. Mr. Silverman, can you identify that document as one executed with the finishing licensees under the Fair Trade Act (handing Exhibit 12 to witness)?—A. Yes.

Mr. GLICKFELD. I offer that in evidence, your Honor.

(Government's Exhibit 12 for Identification received in evidence.)

Q. And was it likewise the purpose of the corporation and Company to use this fair trade agreement, along with its licensing program, as a method of distribution of the Univis blanks and lenses?—A. Yes.

206 Mr. GLICKFELD. I would like to have this fair trade agreement with the retailer marked for identification.

(Marked "Government's Exhibit 13" for identification.)

Q. Can you identify this, Mr. Silverman, as a form of agreement executed with the prescription licensees?—A. Yes. This is a photostatic copy.

Mr. GLICKFELD. I would like to have this received with the same arrangement; that we may substitute an unexecuted form, your Honor.

The COURT. Yes.

Δ (Government's Exhibit 13 for identification received in evidence.)

Mr. GLICKFELD. I offer for identification the letter of transmittal which accompanied the form of fair trade agreement with the prescription licensees.

(Marked "Government's Exhibit 14" for identification.)

Q. Do you identify this, Mr. Silverman, as the letter of transmittal which accompanied the prescription retail fair trade agreement?—A. Yes, this is a photostatic copy of it.

Mr. GLICKFELD. I should like to offer this in evidence under the same arrangement, your Honor.

The COURT. It will be received.

(Government's Exhibit 14 for identification received in evidence.)

207 Q. Was it the purpose of the Corporation and the Company to execute such fair trade agreement as part of their method of distribution along with their existing licenses?—A. Yes.

Mr. GLICKFELD. I should like to have marked for identification a letter dated April 25, 1938, which purports to have been written by the witness to James H. Olds.

(Marked "Government's Exhibit 15" for identification.)

Q. Mr. Silverman, can you identify this as a letter which you wrote to Mr. Olds?—A. Yes.

Q. You actually wrote that letter in due course of business?—A. I dictated the letter, yes.

Mr. GLICKFELD. Your Honor, I should like to read part of this letter and then offer it in evidence as an admission by the defendants:

"I know you realize, Jim, that the purpose of a restricted and controlled policy is to establish an identified protected proposition for the better element, thereby giving them a real incentive to support that proposition. We have during the past eleven years literally turned down more business than we have accepted. This is especially true in cases of Lawrence chain stores who would obviously get the contract price for Univis but who do not generally maintain standards of practice making them eligible  
208 for Univis. Even though Dr. Fouts has definitely cut prices on other merchandise, we doubt whether we would have cancelled his license had he had a better record on Univis. In other words, we would have attempted to use the cause of Univis to try to elevate his other price standards."

(Government's Exhibit 15 for identification received in evidence.)

Mr. GLICKFELD. I would like to have marked for identification what purports to be a letter written by Mr. Silverman to a Dr. E. W. Seeley, dated May 26, 1938.

(Marked "Government's Exhibit 16" for identification.)

Q. Mr. Silverman, do you identify that as a letter written by you in due course of business?—A. Yes. It has my initials on the bottom, so I presume it is. I do not recall the letter exactly.

Q. But you identify it as one you wrote in due course of business?—A. I would like to say yes, but I cannot be certain. I would say it bears the markings. I do not recall the incidents.

Q. Is there any doubt but what you wrote that letter?—A. I would not say. It has "JRS:R" on the bottom. That is the stenographer's note and I presume I dictated the letter.

209 Mr. GLICKFELD. I offer that part of the letter which I am now going to read in evidence as an admission, your Honor:

"You see, Doctor, we only license about 20 percent of the registered men and for that reason almost 80 percent of a Univis licensee's competition is automatically eliminated and he is constantly assured of controlled legitimate profit on each pair of Univis prescribed."

Mr. TOULMIN. Are you offering the whole letter or just part of it?

Mr. GLICKFELD. Well, the whole letter.

Mr. TOULMIN. That is all right, then.

The COURT. It will be received.

(Government's Exhibit 16 for identification received in evidence.)

Mr. GLICKFELD. I should like to have marked for identification a letter purporting to have been written by Mr. Silverman to Edward Weinberg on September 1, 1938.

(Marked "Government's Exhibit 17" for identification.)

Q. Mr. Silverman, do you identify that as a letter you wrote in the due course of business?—A. This bears the same markings, so I shall identify it the same way. I do not recall that.

Mr. GLICKFELD. I should like to offer this letter, your Honor, as an admission.

210 Mr. TOULMIN. If the Court pleases, we want to be understood as objecting to letters of this character. I have hesitated to be captious about so many objections, but this gets down to the same fundamental question: These letters only give reasons why they want to cancel the license agreements or for other reasons control the property accorded to them by law. It does not get us along towards the real issue of whether the license system is founded upon patents that control it and whether the license of the patents covered the articles as merchandised under the license system.

The COURT. Suppose it was stipulated that the action taken in cancellation was capricious, arbitrary, or on any other ground, what difference would it make?

Mr. GLICKFELD. I think we would be pleased to have such a stipulation.

The COURT. What difference would it make?

Mr. GLICKFELD. I think the difference is this, your Honor: that it would show the illegal intent and would also show the act of the conspirators in the furtherance of the alleged conspiracy.

The COURT. Oh, but you cannot have anything more than the declared act as shown in the license agreements. Now, everything that they do is presumably pursuant thereto. If you  
211 want to show that they have committed acts in violation of a statute outside of the agreements which have been referred to, then your complaint should make such allegations, but I have read the complaint and reread the complaint and I find none such.

Mr. GLICKFELD. The Government has always taken the position in the antitrust cases to show the intent and the motive and the actual acts——

The COURT. I am not interested in what the Government does in other cases. I am interested in what the pleadings are as set forth in this case.

Mr. GLICKFELD. Well, our position is that the pleadings were so drawn as to show the acts in furtherance of the conspiracy, and among those acts are the cancellations and the refusals to license the various wholesalers and retailers.

The COURT. But you already have the admission from the witness that cancellations took place. Now, why they took place, and the reason for it, is wholly immaterial if the cancellation was within the power vested in the licensor by virtue of the license agreement.

Mr. GLICKFELD. Your Honor, the theory of the Government is that we are not merely attacking the licensing, per se, as indicated once before, but that we are attacking their method of distribution which is merely indicated in part by their license agree-  
212 ment, and we feel that it is part of their method of distribution, when they make certain determinations as to the ethics or nonethics of certain applicants, or their policy concerning what percentage of the trade they are going to license in order to protect the existing licensees from any potential competition.

The COURT. If they are operating under valid licenses then there is no restraint. It matters not whether they are capricious or whether they control prices or not. The ultimate fact is whether these licenses are valid licenses under the antitrust Act and within the patents or not.

Mr. GLICKFELD. I think we should point out, your Honor, that the retailers do not deal directly with the Lens Company. They deal with the wholesalers, and it is the position——



The COURT. I see that from the exhibit you already offered in substantiation of the allegations of your complaint. That proof is established.

Mr. GLICKFELD. If it please your Honor, it is further the Government's contention that it is not the inherent right, by virtue of patents, that the Corporation can license or not license for distribution any retailer for any reasons whatsoever.

The COURT. You are not contending that a patentee may not make such license?

213 Mr. GLICKFELD. We are contending that in a situation, your Honor, such as we have before us, where the manufacturer sells outright the patented article to the wholesaler, the lens blank in this situation, that therefore the owner of the patent cannot redirect distribution of the finished article.

The COURT. Precisely. Your contention is that these license agreements are invalid because they go outside of the patent monopoly. That is what your contention is. Those are your allegations, and the proof thus far in respect of the cause of action on those agreements has been in support of those allegations, but your complaint does not go beyond that. I shall judge this case on the issues as framed by the pleadings, and not by any vague theory of general antitrust law.

Mr. GLICKFELD. We were under the impression that our complaint did state an issue concerning the licensing or nonlicensing, or the dealing or the nondealing with pricecutters or with ethical merchants. In other words, I think we are taking a two fold attack under our pleadings. At least that was the theory.

The COURT. I gave you the opportunity to develop whatever you have to say in a brief, but in the meantime I am going to sustain this objection because it is going very far afield in my judgment.

214 Mr. GLICKFELD. I should like to make an offer of proof then, your Honor.

The COURT. Yes. That is all right.

Mr. GLICKFELD. That if this exhibit marked for identification had been permitted into evidence, it would have shown—

The COURT. It is marked now for identification, isn't it?

Mr. GLICKFELD. Correct.

The COURT. Now, you offer it in evidence and I will sustain the objection and there is your offer of proof and the disposition by the Court.

Mr. GLICKFELD. Will the record show the admissions in the letter itself?

The COURT. It is part of the record. It is a letter marked by the Court for identification. You have offered it in evidence and I sustained the objection to it on the ground stated.

Mr. TOULMIN. May I suggest, if the Court please; that Exhibits 15 and 16 are on the same basis?

The COURT. Well, we have already admitted them so we won't go back.

Q. I should now like to turn to another subject, Mr. Silverman:

Do you recall some time in the latter part of 1939, having  
215 had certain communications and talks with Mr. Titmus of the Titmus Optical Company?—A. Yes; I recall talks with Mr. Titmus.

Q. And can you tell us briefly the nature of those talks?

Mr. TOULMIN. We object, if the Court please. I trust I am not premature, but I anticipate what counsel is going to ask or is seeking to ask and it may shorten the situation if I object now. If they are seeking to try out an issue of patent infringement that existed between the defendant companies and the Titmus Company, another competitor, or an issue of private alleged unfair competition, we must object because it is no issue in this case. I observe from the pleadings of the Government that they make no allegation that would sustain any such contention on that subject.

The COURT. Suppose you make your offer of proof, Mr. Glickfeld. What you are seeking to prove through this witness is the following:

Mr. GLICKFELD. In the latter part of 1939, the Titmus Optical Company publicized to its customers, who were also customers of the Univis Lens Company, that Titmus was going to manufacture and sell a lens blank having a straight top reading segment which was similar to the lens blank "D" manufactured by the Univis Lens

Company. The Titmus Optical Company decided upon  
216 this policy after certain patents had been held invalid in the C. C. A. (6th Circuit). Mr. Silverman tried to dissuade the Titmus Optical Company from going into this manufacture, stating that it would be an infringement of their patents and would lead to a break-down of the licensing distribution system of the Univis Lens Company. In order to further dissuade Titmus Optical Company from entering into this competitive venture, the defendants notified certain of their large purchasers, wholesale purchasers, that Mr. Titmus, and Titmus Optical Company, were about to enter into the production of the competitive lens, and they also suggested to those wholesalers that it would be to the wholesalers' detriment were the Titmus Optical Company to enter into the competitive field. They also indicated to those wholesalers that something ought to be done. As a result of the suggestion made by the Univis Lens Company, certain of the wholesalers cancelled orders, existing orders with the Titmus Optical Company. These were orders, not for the potential competitive

lens, but for noncompetitive lenses which the Titmus Optical Company was selling to those wholesalers. At least one of those wholesalers, the Johnson Optical Company, informed the Titmus Optical Company that the reason for their cancellation was the fact that the Johnson Optical Company had been informed by the Univis

Lens Company that the Titmus Optical Company contemplated entering into a competitive bifocal field and that this would be greatly to the detriment of Johnson Optical Company and other wholesale licensees, and that the Johnson was cancelling this order to bring pressure upon the Titmus Optical Company not to break down the method of distribution, which break-down, if it did occur, would be greatly to the detriment of the wholesalers and retailers who were distributing Univis products.

The Univis Lens Company then publicized the exchange of correspondence between them, the Univis Lens Company, and Mr. Titmus, and the telegram of cancellation sent by the Johnson Optical Company to the Titmus Lens Company; with the purpose of this publication being to cause other Univis wholesalers who were also purchasers from the Titmus Optical Company to bring to bear upon Titmus the same kind of pressure; upon the Titmus Optical Company; that is, to cancel existing orders in order to dissuade the Titmus Optical Company from entering into the competitive field.

It is the Government's contention that this is part of the overt acts of the conspiracy and could not have occurred but for the type of distribution that the defendants have resorted to in their selling merchandise.

The COURT. Does it appear from your offer of proof that any of these lenses to be manufactured and distributed by the Titmus Company fell under any of the patents that are alleged by the complaint in paragraph 9?

Mr. GLICKFELD. The offer of proof would indicate that the Titmus Optical Company, having been informed that the main patents of the Univis Lens Company having been declared invalid, that they were then going to put out a lens which was similar in appearance to the Univis Lens type "D". That is the reading segment for the straight top. I do not know whether they were going to use all the claims set forth in the patents which had been declared invalid.

219 The COURT. I asked specifically whether the Titmus Company was interfered with in the proposed manufacture, sale or use of any of the devices or processes or other equipment defined and claimed in patents listed in paragraph 9 of your complaint.

**Mr. GLICKFELD.** The offer of proof will show that the Titmus Optical Company denied that they were infringing any of the patents set forth in the paragraph you just indicated. However the Univis Lens Company took the different position, that if Titmus did go into the manufacture, that Titmus would be infringing certain of the patents, among them being the Stanley patent which had then recently been declared invalid by the Circuit Court.

**The COURT.** Did the Circuit Court of Appeals for the Sixth Circuit hold any of these patents invalid that are the subject matter of your complaint?

**Mr. GLICKFELD.** Yes.

**The COURT.** Well, which are they?

**Mr. DISNEY.** The Circuit Court of Appeals in the Sixth Circuit held that patent Nos. 1,899,777 and 1,912,165 were invalid. The defendant appealed to the Supreme Court and certiorari was refused on the appeal. That is the case of the Univis Lens Company v. Rips.

220 **Mr. TOULMIN.** To make your statement correct and complete you should add, and for the Court's information I will add that the patents in question, the first of the two you mentioned, was in issue in the United States District Court of Kansas City before his Honor Judge Otis, and the patent was sustained and held valid; and this patent is still the subject of litigation in that Circuit awaiting trial in another case, as a result of which we will probably have a certiorari granted in due season.

**Mr. GLICKFELD.** I should like to make the record complete, your Honor, in all fairness to the defendants, by saying that the Government is not attacking in any way whatsoever the validity of any of these patents, but has merely brought out the fact that in the Sixth Circuit certain of the patents were declared invalid, as part of our offer of proof concerning the Titmus story.

**The COURT.** Now, under which allegations of the complaint do you say that the offer of proof is comprehended?

**Mr. GLICKFELD.** Well, this would be under paragraph 15.

**The COURT.** Well now, let us see: subdivision (a) of that paragraph says the illegality consists in "contracting, combining and conspiring to designate, according to certain arbitrary rules and regulations, wholesalers and retailers to handle and deal in bifocal lenses."

221 **Well,** that you prove by virtue of these licenses, don't you?

**Mr. GLICKFELD.** That is correct, your Honor.

**The COURT.** "(b) to sell such bifocal lenses only to such designated and selected wholesalers and retailers."

That you have already proved in the same way?

Mr. GLICKFELD. That is correct.

The COURT. "(c) to restrain such wholesalers and retailers from selling to other wholesalers and retailers not so selected."

That appears from the proof.

Mr. GLICKFELD. Yes.

The COURT. "(d) to fix uniform, arbitrary and unreasonable prices at which such wholesalers and retailers could resell such bifocal lenses."

Well, so far as that subdivision is concerned, if you eliminated "arbitrary and unreasonable prices," you have proved that this licensing scheme is an endeavor to fix prices. Whether they are arbitrary or unreasonable is for the moment not important. That still leaves me groping as to how this matter of the Titmus Company falls within any of these subdivisions.

Mr. GLICKFELD. Well, I think it falls, may it please your  
222 Honor, within the introductory part of paragraph 15, where the Government alleges that the defendants have violated and are now violating by unlawfully contracting, combining and conspiring to restrain interstate trade and commerce in bifocal lenses.

I think that under that allegation we could introduce, if your  
Honor so pleases, the references to the Titmus story.

The COURT. What have you to say to that, Colonel?

Mr. TOULMIN. If the Court pleases, my answer to that is simply this, that the subject matter of this offer of proof is nothing other than a statement or a notice of infringement, and a dispute over infringement between two private parties, not constraining or restraining anyone any more than any other notice which is proper to be given would restrain trade; because, as your Honor recalls, the Supreme Court has frequently said that all action in commerce are in some form a restraint of trade, and not an unreasonable restraint. And second, laying aside any patent question, it is purely a matter at most—and I am granting them everything they claim for the conduct—at most, of alleged unfair competition between these two competitive manufacturers of a  
223 purely private nature. The main scheme of doing business set forth in here has no more relation to it than some other utterly unrelated subject matter.

If we read paragraph 15 with its complete meaning in mind, we will see that what the Government was charging in paragraph 15—and I must confess it was the only thing I got out of it; perhaps due to my infirmity in reading it—was that they were reciting the general language of the statute by unlawfully contracting, combining and conspiring to restrain trade; and then



set forth their general allegations based on this patent system of the particular things they complained of constituting that conspiracy. Now, that is a reasonable and common sense way, from my point of view, that this thing reads, You cannot take the middle of a paragraph and leave out of it some statutory language, which the Supreme Court has said is so broad that it read without reference to anything else, would cover most any act that any person or persons might commit; but you must read that in relation to the subject matter of the entire bill of complaint; and that is very carefully set forth here in four paragraphs, this system that has been the subject of proof before your Honor today.

I do not think that the thing covers Titmus at all. If we get into these collateral matters that are just the competitive irritations between competitive manufacturers, not a part of  
224 a general system of doing business, which is alleged to be a restraint of commerce, why, we will have quite a lot of proof on that subject, and I do not think it will advance the issues. At least, that is my view.

The Court. I should not hesitate to dispose of the question were it not for that part of this which relates to its effect upon customers of Titmus in cancelling contracts at the announced intention of Titmus to enter a competitive field. Now, I recognize, of course, the earmarks of a not unusual form of infringement notice. But to the extent that reference is made to what is stated to be unlawful pressure in controlling or restraining competition in the manufacture of bifocal lenses, aside from the lenses that are covered by patents, why, there may be some support for the proposition.

Mr. TOULMIN. Might I just add one thought: The only lens that Titmus was proposing to supply was one of these "D" type, coming within one of these particular patents. So that the notice was purely one of patent infringement, and was not an attempt to threaten Titmus as to other lenses he was making which were not an infringement. I want to clear that up.

The Court. What about the threat to Johnson, assuming that it is a threat?

Mr. TOULMIN. There was no threat to Johnson,  
225 your Honor. I think if that statement conveyed that impression to you, I do not think Mr. Glickfeld meant to make that statement to you, because it is not a fact. The situation was this, if I may restate it for the moment: The several distributors who had received notices from Titmus himself that he was going into this business, they themselves voluntarily took it upon themselves to say that "If you do business it will be injurious to the Univis patents, and being an infringement of them, and there-

fore injurious to our business; and we resent that, and our only means of taking care of our interests thus injured is to refuse to do business with you," which any man has a right to do. Now, that is all this thing amounts to.

The COURT. I think I will take the proof over your objection. I have very grave doubt as to its effect on the ultimate issue, but if you want to prove it, go ahead. Now, it may be that a good deal of it can be stipulated, without waiving the objection.

Mr. TOULMIN. Will you indulge us just a moment, your Honor?

The COURT. Surely. We will take a brief recess, and you can consider that in the meantime.

(Short recess.)

226 By Mr. GLICKFELD:

Q. Just a few more things, Mr. Silverman, and we will be through with you: Under your method of distribution, does the Univis Lens Corporation fix the minimum price at which the wholesaler and retailer must resell the articles, or does the Univis Corporation fix a stipulated price, a set price?

Mr. TOULMIN. We object, if the Court pleases. The contracts themselves are the best evidence of what we have done.

The COURT. I sustain the objection.

Mr. GLICKFELD. The reason that question was asked, your Honor, was because the witness testified that there was a universal price for the sale of Univis goods throughout the country; that wherever a customer went to purchase a lens he would pay the same price for that lens no matter where he went to purchase that lens; and I was merely trying to ascertain how it was that this universal price was brought about, whether it was because a fixed price was determined by the Univis Corporation, and that price had to be maintained under the contracts or otherwise, or whether just a minimum price was set, and that minimum price happened to be the final fixed price of all the retailers.

227 The COURT. Well, so far as the exhibits are concerned, does it appear what the price is?

Mr. TOULMIN. Yes, your Honor. The contracts offered in evidence have attached to them the price schedules, as I understand it. I have not seen them, but I presume that is the case. They have the price schedules attached.

The COURT. Is that your understanding?

Mr. GLICKFELD. That is my understanding.

Mr. TOULMIN. Yes. I have Exhibit 10. It has the price schedule.

Mr. GLICKFELD. That exhibit is the fair trade contract and is not the license agreement itself, which license agreement also refers to certain prices to be fixed.

The COURT. To be fixed?

Mr. GLICKFELD. Or are fixed.

The COURT. Fixed by the agreement?

Mr. GLICKFELD. By the agreement, yes.

The COURT. Then that is the answer, the price is fixed by the agreement.

Mr. GLICKFELD. The reason we were trying to bring it out at this time is that the language of the fair trade agreements may not be the same as the language in the license agreements.

The COURT. You offered them as typical exhibits. They are agreements. In each class the exhibits that you have  
228 offered, I understood, were offered on the theory that they were express uniform contracts in their respective classes.

Mr. GLICKFELD. I understand, your Honor—

The COURT. Well, let us cut it short: The Prices that are fixed. are they based on the license agreements?

The WITNESS. Yes, your Honor.

By Mr. GLICKFELD:

Q. I would just like to clear up one last thing: You have defined "price-cutter" to mean a certain thing, to include those individuals who sell below the prevailing price, and also those individuals who advertise at one price, then sell goods at another price—

The COURT. I asked you, in framing your questions, not to present a summary of his testimony.

Q. It is not a policy of the Univis Corporation to refuse to license wholesalers and retailers who do not maintain the prevailing prices in their respective territories?—A. That would be a contributory reason. You see, it could not be entirely, Mr. Glickfeld, because in the case of a wholesaler so many other things enter into it.

Q. But it is taken into consideration, and that is your answer?—A. Yes.

Mr. GLICKFELD. We are finished with Mr. Silverman.

Mr. TOULMIN. No cross examination, if the Court pleases.

229 Mr. DISNEY. I will call Mr. Brown.

LEO V. BROWN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. DISNEY:

Mr. DISNEY. Before starting the examination I should like to call the Court's attention to the fact that we also consider this man a hostile witness.

Q. What position do you occupy with the Univis Lens Company, Mr. Brown?—A. Well, I am a vice president of the Univis Corporation and give some service to the Univis Lens Company too.

Q. What services do you give to the Univis Lens Company?—A. Advertising help and in some details of handling correspondence.

Q. How long have you been connected with the Univis Lens Company?—A. I think about 1929 I began some service, part time, for the Univis Lens Company, writing some communications.

Q. Have you been connected with the Univis Corporation since its organization in 1931?—A. I became connected with the Corporation, I think, immediately after it was organized, or, at least, was in its employ at the time.

Q. You have been a vice president of the Corporation since its organization?—A. Not from the date of its organization. I believe shortly after it was organized. I believe.

Q. Did you complete your answer?—A. Yes.

Q. What are your particular duties as vice president of the Corporation?—A. I have the handling of details of the licensing.

Q. What do you mean by handling? Do you have charge of them? Is that what you mean?—A. Well, I have charge in connection with others. That is, there is a licensing committee.

Q. Who is on the licensing committee?

The COURT. Well, are you trying to cut down what the other witness said? He gave you the names of three men, Brown and himself and some other.

Q. Are there two or three?—A. And Mr. Silverman and Mr. Hancock.

Q. Are you the chairman of the licensing committee, or does it have such an office?—A. It does not have a chairman.

Q. Does the licensing committee have complete charge of determining the policies as to who is going to be licensed?—A. The licensing committee acts on the applications received.

231 Q. Do they have the last word on the application?—A. Yes; sir.

Q. Do they also have the last word on the cancellations of licenses?

Mr. TOULMIN. If the Court please, it does not seem material to the issue what the machinery is of handling this thing. It is the ultimate fact.

The COURT. I sustain the objection.

Mr. DISNEY. If the Court please, getting back to our complaint, we state in Section 15—A that they designate according to arbitrary

rules and regulations the wholesalers who will be permitted to deal in Univis Lenses, and I am trying to qualify or find out who will know definitely what those rules are.

The COURT. All right, I will permit you to go into that.

Mr. DISNEY. And that was the reason for my question going into the machinery which I will leave very shortly.

Do I understand that he is to answer the question?

The COURT. Yes.

Q. Will you answer the question, sir?—A. Will you repeat it, please?

Q. (Question read.)—A. Yes; sir.

Q. Mr. Brown, will you kindly give your definition of the word "ethical" as understood by the licensing committee or understood by you, rather, in reference to licensing ethical wholesalers?

Mr. TOULMIN. May it please the Court, haven't we been over that on behalf of the company?

The COURT. I think so. Are you seeking some definition different from that which the preceding witness gave?

Mr. DISNEY. I am seeking a definition. Let me reframe the question.

Q. Mr. Brown, is it not a fact that a person who cuts prices on other merchandise than Univis lenses—that is considered unethical?

Mr. TOULMIN. If the Court please, we are getting into other merchandise other than this particular Univis merchandise.

Mr. DISNEY. That is as to arbitrary rules and regulations, your Honor.

The COURT. The preceding witness was asked to define something with respect to Exhibit 7 and is it your purpose to go beyond that?

Mr. DISNEY. It is my purpose to get a more responsive answer if I possibly can, your Honor.

The COURT. If you refer to any of these exhibits and ask the witness to define terms, it will be within the limits of the issues as I see them.

Mr. DISNEY. I do not see how I can do that.

The COURT. Then I will sustain the objection.

Mr. DISNEY. May I say one other thing before the objection is sustained: The correspondence which we intend to introduce, written by this gentleman, shows the construction of ethics of a person before they license him and before he fills out an application, and that is why I do not believe that I can properly confine my examination to the document already made out.



The COURT. I am going to sustain the objection. You can offer this witness any proposed exhibits that you want to.

Mr. DISNEY. Will you kindly mark these papers for identification?

(Marked "Government's Exhibits 18 and 19" for identification.)

The COURT. If there is no objection to them, Mr. Toulmin, just state it and we will receive them.

Mr. TOULMIN. He has not offered them yet, sir, and I just wanted to read them first.

Mr. DISNEY. I intend to offer them right away.

Q. Do you identify writing, Government's Exhibit 19 and receiving Exhibit 18. The one is a letter addressed to you and the other is a letter written by you.

234 Mr. TOULMIN. We object, if the Court pleases. Our reason for objection is this: That this is merely a statement of a purported reason for cancellation. There are some 1,500 of these letters that they have had photostated from our files in order to go into various phases of this. Now, the ultimate fact that we have had reasons for cancellation of licenses is the only real matter of interest; these particular reasons thereunder and the like is of no importance, as we see it and would just merely burden this record and confuse the ultimate question to be decided by your Honor, and it is for that reason that we object. Of course, the documents themselves are not proof of any facts contained in them, but only of the existence of the documents in our files.

Mr. DISNEY. I offer the documents to show the alleged arbitrary rules and regulations under which the defendants designated wholesalers to distribute their products.

The COURT. I will allow a few of these things in, Mr. Disney, but no 1,500. They would only be cumulative and I would have to sustain the objection. I think they are of very little evidentiary value, but I do not want you to be foreclosed on appeal.

(Government's Exhibits 18 and 19, for identification received in evidence.)

235 Mr. DISNEY. Your Honor, I have offered several times to stipulate, I might say, as to the existence of these papers, and I will try to offer just as few as possible, but unless we can arrive at a stipulation that would say they declined to license persons who were price cutters, and that they declined to license persons who were called—

The COURT. Do you tell me that these two letters which are now admitted, Exhibits 18 and 19, and particularly the letter of the defendants is a typical letter in matters of this sort?

Mr. DISNEY. That is a typical letter in telling what location the retailer must be before he is licensed. Excuse me. This is a

letter offering to show that they won't license a person in a drug store. I believe that is correct, and it is the Government's contention that there is absolutely no connection between the location of the licensee and his method of doing business.

The COURT. Location? I don't understand that as to a drug store, so far as location is concerned. Do you mean the field or industry?

Mr. DISNEY. No, I mean the actual physical site of his business. We have letters here which I intend to offer in which the defendants state that they do not and will not license a retailer no matter how highly recommended who does his business in a drug store.

236 The COURT. That is what I was saying. You do not call a drug store a location, do you?

Mr. DISNEY. I call it a business site, yes—a location.

The COURT. When I speak of location I have in mind some physical situs, but you are not using the term "location" in that sense at all. As I now understand you you are referring to a kind of medium of distribution, a drug store rather than a butcher shop, but not a drug store located at the northeast corner of 17th Street and Eighth Avenue.

Mr. DISNEY. That is right. He would license the retailer if he were next door, but they won't license him because he is in a drug store.

The COURT. You have a number of letters which will indicate that they refused to license drug store people?

Mr. DISNEY. That is right.

The COURT. And this you regard as a typical letter?

Mr. DISNEY. This is a typical letter.

The COURT. Colonel Toulmin, will you stipulate, without waiving your objection as to the admissibility of such evidence, that similar letters were written to drug store people?

Mr. TOULMIN. Yes; your Honor.

237 Mr. DISNEY. I will offer one next as to a jewelry store.

The COURT. Maybe you can get a stipulation about jewelry stores.

Mr. DISNEY. That is what I was wondering. I would like to put in one typical letter as to every instance.

The COURT. If you get a stipulation that recites it why do you need the letter?

Mr. DISNEY. Some of the letters go far above and beyond just that particular point, and I believe that we have letters that will cover two points.

The COURT. What other points?

Mr. TOULMIN. If the Court please, in my stipulation I want to state, as I have just been advised by Mr. Silverman, that there are a great many of our licensees in jewelry stores, so my stipulation might not be fully correct, but we would and do stipulate that as to those letters, that was one of the reasons assigned. That is correct.

The COURT. I understood the stipulation to refer only to drug stores.

Mr. TOULMIN. I thought you said jewelry stores?

The COURT. I was trying to work out another stipulation regarding other stores.

Mr. TOULMIN. My stipulation was correct as to drug stores.

238 The COURT. I think, perhaps, if you are going through a number of letters written by the witness wherein refusals were transmitted on behalf of the Lens Corporation declining to give licenses, if you could classify those perhaps between now and 10:30 tomorrow morning when we resume you can get a stipulation, without waiving Mr. Toulmin's objection as to admissibility, and cut down these 1,500 letters very materially.

Mr. DISNEY. We would like to cut down the letters, too.

The COURT. I think that is the way to go at it. We will take an adjournment until 10:30 tomorrow morning.

(Adjourned to June 6, 1941, 10:30 a. m.)

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NEW YORK, June 6th, 1941.

10:30 o'clock a. m.

Trial resumed.

LEO V. BROWN resumed the stand.

Mr. GLICKFELD. Your Honor, with reference to the offer of proof I made yesterday in connection with the Titmus incident, I wish to state that I have conferred with counsel for the defendants, and do not dispute the authenticity nor the genuineness of the exhibit which I now offer in evidence which came from their files, but before doing so they do not waive their objections heretofore stated in the record. They agree, subject to their objection, that the documents in this exhibit were all written or received in the due course of business of the defendant Lens Company or the defendant Univis Corporation. My offer of proof yesterday is to be construed in the light of the documents and this exhibit to be limited thereby.

I now offer these documents in evidence as one exhibit.

240 Mr. TOULMIN. May it please the Court, I believe our objections are of record and I merely call the Court's attention to that fact.

The COURT. Yes.

(Marked "Government's Exhibit 20.")

Mr. GLICKFELD. In order to save the Court's time, your Honor, rather than call as a witness Myer H. Stanley, who is president of the Univis Corporation and secretary of the Univis Lens Company, counsel for the defendants and counsel for the Government have agreed that we would offer in evidence an affidavit executed by Myer H. Stanley. I understand from Mr. Toulmin that there will be no objection as to authenticity or genuineness or the truth of the matters stated therein. If Mr. Stanley had been called to testify he would testify as to the facts stated therein, and I offer this affidavit in evidence.

Mr. TOULMIN. That statement is correct, your Honor, save and except our objections as to materiality.

The COURT. This will be received.

(Marked "Government's Exhibit 21.")

Mr. DISNEY. The documents that I am now about to offer have been the subject of a stipulation as to authenticity. All of these are stipulated in the Exhibit A. Will you kindly mark these for identification, please.

(Marked "Government's Exhibit 22", for identification.)

241 Mr. TOULMIN. If the Court pleases, we object to the exhibit on the ground that this deals with reasons of cancellation. It is the position of the defendants that it makes no difference what the reasons were; if we had the right to cancel under our contract, which was a cancellable and revocable contract and we had a valid contract, the exact reason is not important or material.

The COURT. It is not offered in evidence yet.

Mr. DISNEY. I was just going to offer it.

Mr. TOULMIN. I thought he had offered it.

The COURT. Does this follow the procedure I suggested yesterday to get typical letters in the record instead of a great number of letters bearing on the same subject matter?

Mr. DISNEY. It does, your Honor. This particular set of documents I intend to offer this morning are typical instances. We discussed with counsel this morning about placing the others into the record, subject, of course, to their right to object to relevancy. We came to an agreement as to the fact that they would not question the authenticity, but would object to the relevancy, and the Government agreed to take from each file—I should explain there are usually three or four papers in each file—and take the one paper that is, you might say, the crux and then Monday morning we plan to offer a considerable number of papers without

242 questioning the witness; just offer them into evidence. But unfortunately we were unable to work out an agreement as to the exact terms of what the stipulation provide as to cutting



down the number of cases to be presented, so we will cut down materially the number of papers.

The COURT. I will overrule the objection to this, but I can suggest that this matter of cumulative testimony will certainly reach the point where I shall sustain objections.

Mr. TOULMIN. May it please the Court, I wish to, for the record, correct the statement by Mr. Disney, who was not present this morning at the agreement with counsel, which was Mr. Glickfeld. Mr. Disney evidently has not an accurate picture in mind. This morning there was presented to me quite a large number of documents, sorted into about a dozen or fifteen groups, each group representing some cause of cancellation, and I told Mr. Glickfeld that I would suggest that if he would reduce it down to a very minimum number of pieces of paper and a minimum number of cases, that is, typical instances, that we would have no objection to the authenticity, and that would expedite the matter for the Court, because after all the fact of the cancellation and the reason stated is all the ultimate facts we really need here.

The COURT. Yes.

243 Mr. TOULMIN. And then when the court was about to open Mr. Disney came in with a pile of papers that he now has before him, which were attached to a stipulation as Exhibit A, which seemed to be additional incidents. Now in my view, if I am correct in my understanding, this would merely be with these exhibits and with the other ones that Mr. Glickfeld offers, duplications, and in the interest of reducing this thing to its ultimate facts, to make it a case within some reasonable scope, my suggestion would be to pick out just a few of these papers as typical and put them in subject to those objections.

The COURT. That is what I understood was the suggestion to be adopted yesterday.

Mr. TOULMIN. I am quite in accord with that suggestion if counsel is agreeable to putting in four or five such instances, or two or three as to each particular type of cancellation, and then agree that those are typical to many such other documents in our files.

The COURT. I think it is a little unfortunate that efforts to arrive at a stipulation are conducted with two representatives of the Government without the presence of both at the same time.

244 Mr. GLICKFELD. May I say a word, your Honor? There may have been a misunderstanding this morning, but I thought I made it very clear to Mr. Toulmin that Mr. Disney was going to examine Mr. Brown this morning on a few examples in each class.

The COURT. Why do we need Mr. Brown's testimony at all?



Mr. TOULMIN. I suppose to identify this correspondence.

Mr. GLICKFELD. The correspondence has already been stipulated to as to its authenticity, as to its genuineness, and that they came from the files of the company, and I think the purpose of the testimony is just to spell out their course of conduct, which may not be exactly spelled out by the pieces of paper themselves.

245 The COURT. Well, why do you have to offer these exhibits if similar things are to be considered over the week end and reported on Monday morning.

Mr. GLICKFELD. I think our arrangement was, so far as the Government is concerned, that on Monday morning we will just put into the record a few examples of the typical ones that Mr. Brown would be examined about this morning, so that we would have a few today concerning which he will examine, and a few on Monday concerning which there would be no examination, just to show that there were other examples and to show that those examples were substantially similar to the ones that were put in this morning.

The COURT. I feel reluctant in admitting all this in evidence. I am going to do it so that a reviewing court will not feel in any way limited in their review of the Government's theory of the case; but I must repeat my own very decided notion of this case is that the legality of the defendants' actions would be governed by a measurement of the monopoly right and their acts within or without the scope of that monopoly right.

(Government's Exhibit-22 for identification received in evidence.)

Mr. DISNEY. Your Honor, as to that, with your permission, I have prepared a draft of a very short brief of the evidence that should go in. Now, as to cutting down Mr. Brown's testimony,

I believe I can limit it materially by asking him what cer-  
246 tain words and things written on various forms refer to—

The COURT. When you speak of "forms," do you mean the agreements, the license agreements?

Mr. DISNEY. No, I speak of the salesmen's reports. A great number of the salesmen's reports which we intend to offer have written across them "revoke" in pencil. I would like to know if on the basis of that report the license was revoked; and I would like to know further what consideration was given in a great many instances, or whether no consideration was given to other factors, when a report comes in one day and the revocation goes out the next. And I believe I can limit my oral examination of Mr. Brown materially and then will offer the papers as you suggested.

The COURT. Go ahead.

Mr. TOULMIN. May it please the Court, there is just one matter I should like to mention: In connection with this brief which was just handed to your Honor, and which was handed me a few minutes ago, I notice on page 2 of the brief, the middle full paragraph, the statement that "In paragraph 32 of their answer defendants deny that they have refused to deal with price-cutters or dealers otherwise engaged in business practices of a nature disapproved by the defendants."

247 I further notice the statement: "In paragraph 33 of their answer defendants denied they have revoked licenses issued to wholesalers and retailers when the defendants have learned or suspected that a licensee was engaged in price cutting or in business practices of a nature disapproved by the defendants."

Now, in examining the answer, paragraphs 32 and 33, I do not find that that statement is correct, and I merely call your Honor's attention to it for the moment. Our position has been that we have a right to cancel for any reason, including price cutting; and the second observation I wish to make, which will take only one more moment, is that in the cases cited by them, as I glanced at them hastily, on the question of intent, those cases seem to deal with criminal actions where intent is material.

The COURT. Yes; I have noticed that. If you care to submit an answer, you may.

Mr. TOULMIN. I appreciate that. I will.

The COURT. Go ahead, Mr. Disney.

Mr. DISNEY. I only wish to call attention to the fact that paragraph 32 of their answer denies the averments made in our paragraph 23 in which we allege that they did refuse to issue licenses to wholesalers and retailers who were price-cutters; and I do not see how the question can be more plainly put into issue than in that language.

248 In the same way, in their paragraph 33, they deny the averments made in paragraph 24 of the complaint in which we say that they revoked licenses to price-cutters—revoked licenses to wholesalers who were price-cutters.

Direct examination by Mr. DISNEY continued:

Q. Mr. Brown, will you kindly examine those papers, please.—A. Yes [examining].

The COURT. Will you put the question, please?

Mr. DISNEY. Yes.

Q. Mr. Brown, do you recall writing the letter there, or the memo to Mr. Marks, dated 9/13/39? That is the one on top, I believe.—A. I did not recall it until this refreshed—that is, I recognize it now, apparently, as something I wrote.

**Q.** Who is Mr. Marks?—**A.** Mr. Marks is a representative of the Univis Lens Company; also serves as representative of the Univis Corporation. He is located in Chicago, usually, covering territory in that district, and Minnesota, or was at that time.

**Q.** What were his duties as traveling representative of the company?—**A.** He called on licensees and prospective licensees, giving them instructions and promoting the sale and their interest in Univis Lenses; their use of Univis lenses.

**Q.** Did one of his duties include that of checking up on violations?—**A.** Yes, sir; that would be one of his duties.

249 **Q.** Are you familiar with the cancellation of Mr. Atkinson?—**A.** Do you want me to answer that?

**Q.** Yes.—**A.** Yes; I am familiar with this.

**Q.** Will you kindly state the reason for that cancellation as disclosed by the correspondence and your recollection?—**A.** This is a matter in which there were reports of price violations, and a shopping test was arranged, and a sale made at less than the stipulated price.

**Mr. TOULMIN.** If the Court pleases, all the witness is doing is refreshing his memory from reading the documents themselves, which are the best evidence of the matter. I submit we are not getting very far.

• **The COURT.** I do not think we are either.

**Q.** Now, this person was cancelled because he sold Univis lenses at less than the established price, right?

**Mr. TOULMIN.** We object.

• **The COURT.** Sustained.

**A.** That is what appears from this—

**Mr. DISNEY.** Your Honor, may I explain—

**The COURT.** The way to get at it is to ask this witness if he knows about that incident, and if he does not know about the incident, whether reading the paper will refresh his recollection; and if his recollection is not refreshed by the reading of the paper, then you offer the paper in evidence. It certainly is not  
250 the way to proceed to offer the paper in evidence and then have the witness read into the record what he finds there, adding nothing to the circumstance.

• **Q.** Does that paper refresh your recollection as to why he was cancelled?—**A.** Yes; it does.

**Q.** Well, will you answer my other question? Was he cancelled because he sold Univis lenses at less than the stipulated price?

**Mr. TOULMIN.** We object for the same reasons just stated; the papers speak for themselves; and we object, of course, to the pertinency.

The COURT. He said that reading the papers refreshed his recollection.

A. It refreshes my recollection to the extent that there was an occurrence—I see a notation of a receipt having been given, a down payment—I simply remember that there was some such occurrence.

Q. But you do not recall the reason for the cancellation, is that right?—A. The reason for the cancellation, the deviation from the contract provision. In other words, violation of the contract.

Q. The specific violation was selling Univis lenses at less than the established price, is that right?—A. Selling them or offering them at less than the price. The specific reason for cancellation given was that the license was not serving the purpose satisfactorily. We did not enter into the accusation there.

Q. Let me ask you, had the Univis Company ever cancelled the license of a person, to the best of your knowledge, for selling Univis lenses at above the established price?

Mr. TOULMIN. Same objection, if the Court pleases; and if the Court will indulge me, may it be understood that my objections on this line will be repeated to each question without interrupting the proceedings?

The COURT. Yes.

The WITNESS. Shall I answer?

The COURT. Go ahead.

A. You ask if we have ever cancelled a license for selling above the minimum price?

Q. That is the question.—A. We have not. You said stipulated price? The Univis Corporation contract establishes minimum price only. It does not stipulate the price. I do not know whether that means anything or not. I think it is the same that the contract mentioned.

252 Mr. DISNEY. I would like to have these documents marked as Government's Exhibit for identification.

(Marked "Government's Exhibit 23" for identification.)

The COURT. Mr. Disney, let me ask you this question: Suppose A was the owner of a patent and B wants to take a license under that patent, and A says to B "No, I won't do business with you. I don't like you" or "You have brown hair and blue eyes." Is A violating any law in refusing to deal with B?

Mr. DISNEY. A is not violating any law in my opinion by refusing to deal with B, but I must submit I do not believe that is the question presented in this case.

The COURT. I certainly think it is the question in this case. Here A owns a number of patents and he, let us say, arbitrarily,



undertakes to license X, Y, and Z, and then arbitrarily he cancelled those licenses to X, Y, and Z. When I say "arbitrarily" I mean pursuant to the terms of the license agreement, and then he says "I like L, M, and N better and I am going to do business with them." Are those illegal acts?

Mr. DISNEY. Not as you state them, your Honor.

The COURT. What is the difference between the case presented here and the case that I have asked you to suppose?

253 Mr. DISNEY. In this particular case, your Honor, we hold, and we are not contesting the right of the Univis Lens Company to sell to whom it pleases, and I think that is the situation which you outlined. We are contesting the right to impose upon the purchaser of their material for value; impose upon that purchaser, commercial restrictions, and further to compel that purchaser for value to sell only to other people approved of by the Univis Lens Company.

The COURT. Suppose the agreements are valid agreements, then does it make any difference whatsoever how capricious their actions may be in cancellation?

Mr. DISNEY. The view that I take is that a patent license—

The COURT. I wish you would answer the question and not suppose another set of facts.

Mr. DISNEY. I am not. I do not see how I can assume the agreements are valid unless I state that they are theoretically patent license agreements and I would say then that the defendants have no right to place in a patent license agreement commercial restrictions—

The COURT. You do not answer my question. You refuse to adopt the assumption. Will you please state your position  
254 in respect to the assumption which I have asked you to consider; that these various license agreements are valid; assuming those agreements are valid and the owner of the patent then undertakes, capriciously, to cancel any of the agreements, what violation of the anti-trust statute is involved in so doing?

Mr. DISNEY. I am starting out under the burden of a tremendous assumption, but assuming that is so, your Honor, we propose to show that the wholesalers, where they could not combine themselves, where the agreements from the defendants have in effect permitted them to combine among themselves and to enforce, horizontally, the commercial restrictions.

The COURT. Then you won't make the assumption that I have asked you to make.

Mr. DISNEY. I am afraid that I am unable to do it, your Honor. I am sorry.



The COURT. Then I say that is the weakness of the Government's case. The critical question in this case is whether those contracts are valid. If they are valid, and to be valid they must be within the monopoly granted, then there is no violation of the statute. If, on the other hand, they are invalid, unlawful, then you prove your case without being compelled to offer evidence as to acts which were done pursuant to the provisions of such contracts, and consequently the reason why the defendants did certain things in no way enters into a disposition of the issue involved in the case and either the contracts are valid or they are invalid. If they are valid then there is no violation of the statute. If, on the other hand, they are unlawful then the Government is entitled to a decree and is not bound in any respect to show that their acts in cancellation are capricious or arbitrary or fanciful or anything of the sort.

Mr. DISNEY. We set up in the complaint—

The COURT. As a matter of fact the defendants, for the sake of argument, might concede that they did arbitrary things, but pursuant to the power vested in them under the patent statute.

Mr. DISNEY. Your Honor, I do not believe that the patent statute gives the defendants a monopoly to the extent that they can violate other laws.

The COURT. You are arguing wholly in a circle. You will not face the issue as to whether these contracts are lawful. Now in order to determine whether they are lawful it must be demonstrated that they are within the patent statute. If the things that the defendants have endeavored to do, and did, in the making of this license system is beyond the monopoly right conferred, they are unlawful and violate the statute and violate the anti-trust statute. That is the way I see it.

256 Mr. DISNEY. That is a very hard question to answer. So suppose I go along, not indulging in the assumption that they are invalid, and endeavor to put in these papers.

The COURT. I do not want to embarrass you further, Mr. Disney, but let me, for the sake of my own peace of mind, ask you this question: Is it your contention that under the pleadings, even if the license agreements are found to be lawful and non-violative of the anti-trust statutes, that nevertheless there are other things that these defendants have done which spell out a violation of the anti-trust laws?

Mr. DISNEY. Yes. For instance we state that they have licensed, or rather have designated, the wholesalers and retailers to sell the goods according to certain arbitrary rules and regulations.

The COURT. But that is the provision of their license.

**Mr. DISNEY.** Those arbitrary rules and regulations under which they license wholesalers and retailers are put into effect before the licenses are issued. For instance we offered evidence yesterday to show that they told the trade, and I believe it is true they license only about 20 per cent of the various retailers, and they guarantee to the retailer that—

257 **The COURT.** How can the owner of valid patents be compelled under statutory or other law to issue licenses to any and all? You know there are countries where there are compulsory licenses, but not in the United States.

**Mr. DISNEY.** That is right, your Honor. But here we will get back to the proposition that we think, first, the patents do not cover the acts of the wholesalers and retailers, and, second, that all the patent monopoly gives the defendants is the exclusive right to make, use, and vend the patented article, which they exhaust by selling to the wholesaler, and that efforts to place commercial restrictions to ride along with the article they have sold is illegal.

**The COURT.** I am afraid we are getting nowhere with this discussion.

**Mr. DISNEY.** I am sure it is my fault. I am not enlightening any on it.

**The COURT.** Colonel Toulmin, you are, I suppose, and you have argued the matter so I don't have to ask you to state your position, but you are stating that so long as you keep within the scope of your licenses it does not make any difference what motive animates you with respect to the performance of those agreements?

258 **Mr. TOULMIN.** That is correct, sir. I did not want to interrupt a minute ago, but I was about to call attention to the paragraph of our answer where we set that forth; that it makes no difference what is our reason so long as we stay within the four corners of our contracts and within the patent law.

**Mr. DISNEY.** There is one other thing I would like to interpose here: Defendants are not charged with contracting to violate the Anti-Trust Law, but with conspiring to violate the Anti-Trust Law.

**The COURT.** The conspiracy is setting up these licenses which you say are illegal because you say they go beyond the confines of the patent statute.

**Mr. DISNEY.** And that their acts and their intent and that their—

**The COURT.** I suppose if a licensor sets up a system of patent licensing he has the intent to do that.

**Mr. DISNEY.** But the intent is material in this respect: As showing that they have not made a reasonable exercise of the patent monopoly.

The COURT. They do not have to. It can be a wholly arbitrary exercise of the patent monopoly.

Mr. DISNEY. I had understood that restraints were supposed to be connected with some reasonable pecuniary return.

The COURT. The patent monopoly is an absolute monopoly 259 to exclude everybody else from making, using and selling the patented thing, and the source of that power of exclusion is not involved in the exercise of it at all.

Mr. DISNEY. But once they have the power to prevent others from making, using, and vending material, it does not give them the right, in my opinion, to misuse their patented material. They make a commercial misuse of it in the eyes of the Government. They not only compel their licensees to observe their own prices, but the evidence will show that they use that to compel their purchasers to raise prices on other products.

The COURT. Now you are arguing that they do things that the licenses, in other words, go beyond the monopoly grant. I agree that that is the issue in the case and nothing else; whether they do or whether they do not go beyond the monopoly grant. But the monopoly grant is a very powerful one. The monopoly grant is a right to exclude, and without any reason, any and all from making, using, or selling the patented thing.

Mr. DISNEY. Well, I will state it this way, we are trying to show how far beyond the monopoly grant they went.

The COURT. Yes; and I thought your case consisted in proving that the licenses themselves disclose that exercise of power beyond the monopoly right.

260 Mr. DISNEY. Shall I go on and question the witness?

The COURT. All right.

By Mr. DISNEY:

Q. Mr. Brown, from your examination of the exhibits I just offered to you do you recall them as coming from the same file as the Atkinson case?—A. No; I do not.

Q. Or referring to the cancellation?—A. No. Some of these I do not believe I ever saw before, and they are written by various people, different dates, relating to different inquiries, and without going over them I am having a little difficulty connecting them up, although I realize they refer to Atkinson.

Mr. DISNEY. I discussed the matter with Mr. Toulmin a short time ago and he said that to facilitate our presentation, and to prevent having to recall Mr. Silverman and question Mr. Hancock, that he would not object, I believe, to the introduction; that is, as to the authenticity of the documents.

Mr. TOULMIN. No. I have already stipulated that. I have not the slightest objection to the authenticity and you do not

have to have any witnesses on it and we are willing to agree to that, but our objection goes to the—

The Court. Relevancy?

Mr. TOULMIN. To the relevancy to the legal issues here, and that is all.

261 Mr. DISNEY. I offer that file in evidence.

(Government's Exhibit 23 for identification received in evidence.)

(Papers marked "Government's Exhibit 24" for identification.)

Q. Mr. Brown, I wish to call your attention to the letter there of 10/22/38 from you to Mr. Marks [handing to witness].—A. Yes.

I identify them as communications.

262 Q. You can?—A. Yes.

Q. Do you see the language there in which you ask whether the complaint includes cutting prices on Univis directly or indirectly?—A. I see that; yes.

Q. Will you kindly explain what you meant by the language "indirectly"? How would they cut prices indirectly?—A. Well, the indirect cutting of price would be an unreasonably low price for an article supplied with it, such as frame or mounting, an unreasonably low mounting, and a cutting of the prices on the lenses; the whole job.

Q. Will you also examine the letter of October 29th that you wrote to Mr. Marks? Do you find in that letter this language:

"If you can get a look at Belgard-Spero's invoices to him they may show that the retail prices he lists for the jobs were indirect price cuts on Univis on account of the mountings or frames supplied?"

A. I see that.

Q. Who was Belgard-Spero?—A. Belgard & Spero is a Univis distributor.

Q. Were you asking Mr. Marks to examine the records of the Univis distributor to see whether he could determine therein a violation by the retailers, Mr. Barnett?—A. The record speaks for itself.

263 Q. Well, I want to get that clear. Is that what you are asking Mr. Marks to do?—A. We are asking Mr. Marks to get the information; yes.

Q. How are you asking him to get the information?—A. By looking at Belgard-Spero's invoices, if he could.

Q. Is that a practice that you make, of asking the man in the field to examine the records of the wholesaler in checking up on the retailer?—A. I do not know that I ever used that at any other time; I am not sure. It would be very few times that that suggestion was ever made, checking through the invoices, although I



would not be able to say how often it was done. It would be one source of information.

Q. Do you know of your own knowledge whether or not they very often checked the invoices of other wholesalers in checking on violations by retailers?—A. Not of my own knowledge.

Q. Will you turn now to the letter of October 18, 1938, from you to Mr. Barnett?—A. Yes.

Q. Do you see a note on the bottom of that letter reading: "Remove. Central States and Benson request removal because of alleged price cutting activities—R. Marks."

Is that on the bottom of your copy?—A. Yes.

Q. What is your practice with regards to putting such notes on the bottom of letters? Is that an extract from 264 a report made by Mr. Roy Marks?—A. That I would not be able to tell from this. It might be an extract from a report made by Mr. Marks, or it may be a report made by him in connection with something else. I could not tell from looking at it here.

Q. But since his name is there, doesn't that mean that he recommended that you remove Mr. Barnett?—A. That means that he recommended removal.

Q. Is it your custom, Mr. Brown, in a great many instances to have such notes typed on the bottom of the letters of cancellation, indicating the reason for which the cancellation was made?—A. It is.

Q. Who is Central States who requested the removal of Mr. Barnett?—A. Central States Optical Company, I assume is meant by this note, the Central States Optical Company, a Univis distributor.

Q. And who is Benson, do you know?—A. Benson Optical Company is a Univis distributor.

Q. Do you often remove licensees at the request of the distributors?—A. I cannot tell what the language of this is. I could only tell a cancellation at the request of a distributor if it comes to us as a request. Mr. Marks, if this is quoted from his report or a statement of his, mentions it as a request. But the request would mean simply information.

265 Q. Doesn't it say there that they request his removal?—

They are not requesting information.—A. No; I said to us it means the information that they request his removal; the information that there is price cutting activity. They knew about it. They may have informed us about it.

Q. Then you would treat this just as a complaint of a violation?—A. No. I say that the information about Central States and Benson was given to Mr. Marks and the cancellation was on the



basis of Mr. Marks' report. Mr. Marks would check a request like that and make his request for cancellation. It is his request, or his suggestion.

Mr. DISNEY. I offer that in evidence.

(Government's Exhibit 24 for identification received in evidence.)

Mr. TOULMIN. Might I make a suggestion, if the Court please? The COURT. Yes.

Mr. TOULMIN. To expedite this matter for the gentlemen on the other side, if they will take their mass of papers there and just put them in en masse, and ask one or two or three or four general questions as to each incident, it might be helpful.

The COURT. Why shouldn't you do that? Why shouldn't that be done?

Mr. DISNEY. I am trying to do that as much as possible. I asked him as to the meaning of the specific language and specific instances in relation to the documents, trying to make clear their exact meaning. And I will certainly continue that practice.

Will you mark this?

(Marked "Government's Exhibit 25" for identification.)

Q. Will you kindly look at the very first letter there of March 16, 1938?—A. Yes?

Q. Do you see a note on that saying, "Cheap, cheap, cheap"?—A. Yes.

Q. What does that mean?—A. I simply would say it is an emphasis of cheapness. He is cheap.

Q. What does that mean to you, I mean? Will you explain that to the Court?

The COURT. Is it your handwriting, Mr. Brown?

The WITNESS. It is not my handwriting.

The COURT. I will sustain the objection.

Q. One more question: Is this a note similar to this type on the other form of cancellations?

The COURT. What do you mean "similar"?

A. I can't tell from this. I can't tell whether that was a note—

Mr. TOULMIN. Just a minute. The question is so ambiguous, if the Court please—

The COURT. I sustain the objection.

267 Mr. TOULMIN. Thank you.

Q. Will you look at the letter of October 13, 1938? I think that is the last letter in the stack, Mr. Brown.

The COURT. What is the question about it, Mr. Disney?

Q. Is one of the reasons that you cancelled this man the fact that he did not push Univis lenses as he promised?

Mr. TOULMIN. I object.

The COURT. I will sustain the objection.

Mr. DISNEY. I offer that in evidence.

(Government's Exhibit 25 for identification received in evidence.)

Mr. DISNEY. Will you mark this, please?

(Marked "Government's Exhibit 26" for identification.)

Q. Who was Mr. Merville, Mr. Brown?—A. Mr. R. E. Merville was the Pacific Coast manager for the Univis Lens Company.

Q. What were his duties as Pacific Coast manager?—A. His duties were to promote the distribution of Univis lenses, to secure applications for licenses; to report to the Univis Lens Company and to the Univis Corporation.

Q. Did his duties also entail policing of Univis distribution system?—A. That would be part of his work. I would say, to make investigation of any violations of the Univis Licensing policy.

268 Q. Did you follow his recommendation as to cancellation?—A. We did not necessarily follow them. I would have to have a specific case to say whether or not we followed. We did not always follow.

Q. Did you not follow them in a large majority of the cases?—A. I would say on the basis of the reports we followed them in the majority of the cases. That is not a statement from checking any record.

Q. Did you also follow his recommendations as to the issuance of licenses?

Mr. TOULMIN. If the Court please—

The COURT. Sustained.

Mr. DISNEY. Your Honor, I would like to explain why I am asking these questions: Mr. Merville is dead, and we propose to offer as one exhibit a considerable number of letters that he wrote; and the authenticity has been admitted; but I wish to establish his agency and establish his authority to write those letters, as binding upon the defendants. And I do not know how else I can establish it.

The COURT. You have already asked what this man's duties were, what he was authorized to do. That is it. Produce the correspondence. Offer that.

(Government's Exhibit 26 for identification received in evidence.)

Mr. DISNEY. Will you mark these papers, please?

269 (Marked "Government's Exhibit 27" for identification.)

Q. Will you kindly examine the letter of September 17, 1938, from Mr. Marks to yourself.—A. Yes?

Q. Do you see a note on the bottom of that letter stating, "Regret No. 1"—

Mr. TOULMIN. If the Court pleases, we object to it. Counsel is merely having the witness affirm what the letter shows on its face—

The COURT. I suppose he wants to know what the "Regret No. 1" is. Is that it?

Mr. DISNEY. Yes.

The COURT. What is "Regret No. 1"?

The WITNESS. That is one that we used in our office to indicate a type of follow-up letter to a licensee who had not been showing active use of Univis lenses, and trying to get him to become active.

Q. Is the letter of September 19, 1938, a copy of such letter?—

A. I believe that is Regret No. 1.

Q. And is the letter of October 10, 1938, Regret No. 2?—A. Of September 10th you say?

Q. October 10th, addressed to Dr. E. F. Hoffelt.—A. I believe that is Regret No. 2.

Mr. DISNEY. I offer it in evidence.

(Government's Exhibit 27 for identification received in evidence.)

270 Mr. DISNEY. Please mark this for identification.

(Marked "Government's Exhibit 28" for identification.)

Q. Who is Barnet & Ramel?—A. A Univis distributor, wholesaler in Kansas City, Missouri.

Q. Do you make a practice of cancelling licenses upon receipt of their recommendation that you do so?—A. No, sir; we do not, unless we have other information that would indicate an additional point of information that indicated the step.

Q. Did you make an investigation before you cancelled the license to Mr. Hoffelt there?—A. You asked me one question before. You asked me a general question and now you are asking me about this letter?

271 Q. I am asking you if you made an investigation before cancelling the license to Mr. Hoffelt?—A. If we cancelled licenses at the request of a distributor this cancellation was on the basis of information. I would say that this is part of the information. I would not know what other information there was. I would not know now.

Q. Did you ever investigate the quality of work done by the retailers before cancelling their licenses?—A. I myself?

Q. No. Did you have it done by investigators?—A. Why, they went into the quality of the work of retailers right along.

Mr. TOULMIN. If the Court please, I want to call attention to the fact that Mr. Disney has used the word "investigators" which I think the witness thinks refers to his salesmen. So there will be no misunderstanding I hope Mr. Disney will ask the question now at this point in the record as to whether there are some outside investigators, detectives, or is he referring to whether a member of our own organization is referred to because some point has been made about that. I ask that he clear it up right now.

Mr. DISNEY. I accept the suggestion of Mr. Toulmin.

Q. Did you ever have your salesmen or traveling  
272 representatives investigate as to the quality of work done by these licensees before having the licenses cancelled?—

A. Why investigation? I would hardly know to what extent you mean. What part of their work? What part of the quality of their work?

The COURT. Don't you see, Mr. Disney, you do not get very far with a question of that sort. Suppose information came to the Lens Company or to the Corporation that there had been price cutting, what could it say? It could send out an investigator to find out whether their work was satisfactory?

Mr. DISNEY. There again we are taking issue with the allegation in the defendant's answer in which they deny they ever cancelled for price cutting but aver on the contrary they always cancelled licenses only because the person did not do good work, and I am endeavoring to find out from this witness, who is in charge of the licensing committee, as to whether such investigations were made of the quality of work done by the licensee.

The WITNESS. I am not in charge of those men. I am not in charge of the licensing committee. I send out the notices.

Q. Who is the one who has the final say whether a man is to be cancelled or not?—A. The licensing committee.

272 Q. Who on the licensing committee has that final say?—

A. I would say the final say on a cancellation would be Mr. Silverman, the head of the company.

Q. Isn't it a fact that in almost every instance where you received a recommendation from Barnet & Ramel that you cancel a license, you immediately cancelled that license?—A. No; that is not a fact.

Q. You did it in this particular instance, did you not? Their letter was written October 15th and the cancellation was dated October 17th.—A. This letter shows we issued the cancellation on the same date that we wrote to Barnet & Ramel Optical Company.

Q. But their letter of complaint was written just two days before, is that not true?—A. I cannot tell from this.

Q. Take a look at the letter of Barnet & Ramel.—A. Oh, yes. In that case we acted on their withdrawal of a recommendation they had previously made, and cancelled on account of change in practice reported. We had looked to see if we had any other information in the office.

Q. And according to that same notation you had no other information in the office?—A. We indicated that we found no other information.

Mr. DISNEY. I offer it in evidence.

(Government's Exhibit 28 for identification received in evidence.)

274 (Paper marked "Government's Exhibit 29" for identification.)

Mr. DISNEY. I will offer this one in evidence. There is no questioning about it necessary.

(Government's Exhibit 29 for identification received in evidence.)

(Paper marked "Government's Exhibit 30" for identification.)

Mr. DISNEY. I will offer that in evidence also without any questioning.

(Government's Exhibit 30 for identification received in evidence.)

(Paper marked "Government's Exhibit 31" for identification.)

Q. Mr. Brown, does your company make a practice of cancelling the license of a licensee who moves in with a price-cutter?—A. Who moves in with a price-cutter? Becomes part of his establishment you mean? That would depend upon our judgment of the circumstances entirely in the individual case.

Q. Isn't it a fact that in a great many instances licensees described as wholly unobjectionable have been cancelled when they moved into the office of a price-cutter?—A. When they became identified with a price-cutter?

Q. That is right.—A. That is whose methods, you might say, were good under other circumstances and under other control  
275 and we cancelled when they moved under the control of a price-cutter; using these terms "price-cutter" as meaning the methods, objectionable methods, that a price-cutter indicates to the trade in general.

Q. Is not a price-cutter one who sells below price?—A. I would say not.

The COURT. Do we have to go all over that again? I thought the defendant had given its understanding of what a price-cutter was.

(Paper marked "Government's Exhibit 32" for identification.)



**Mr. Disney.** I offer Government's Exhibit 31 for identification in evidence.

(Government's Exhibit 31 for identification received in evidence.)

**The Court.** How many more have you, Mr. Disney?

**Mr. Disney.** There will be only two or three more concerning which I shall ask questions and then we will cull them down as much as possible and put them in as one exhibit, your Honor.

**Q.** Isn't it a fact, Mr. Brown, that very often you cancelled the licenses of retailers upon complaints by their competitors?—**A.** You ask me a very general question, but I would say that reports from dealers in a territory was a source of information to us, just as reports from our representatives were sources of information, and reports from our distributors were sources of information. We acted on the information we received to the best of our judgment.

**Q.** And you act on the information of the retailer licensees too, isn't that right?—**A.** You mean using that as a source of information?

**Q.** That is right.—**A.** That is right.

**Mr. Disney.** We offer that in evidence.

(Government's Exhibit 32 for identification marked in evidence.)

(Paper marked "Government's Exhibit 33" for identification.)

**Q.** Mr. Brown, what particular types of advertising does the Univis Corporation object to?—**A.** I would call it objectionable—

**Mr. Toulmin.** If the Court please, I cannot see how the opinion of this defendant or these defendants as to what is good advertising or bad advertising would have anything to do with a case of this character.

**The Court.** It is not a question of good or bad. This, I suppose, is directed to capricious conduct.

**Mr. Toulmin.** Perhaps so. If that is so it is all right.

**The Court.** The witness is not asked as to what is good or bad but he is asked what they object to, which might be a totally different thing. They might object to good advertising.

**Q.** Will you answer the question, please, Mr. Brown.—

**A.** I consider bad advertising advertising that makes misrepresentations.

**Q.** Do you also consider it bad advertising to advertise prices?—

**A.** I consider it bad advertising in the optical business to advertise prices.

Q. Do you consider it bad advertising to advertise instalment payments?—A. I consider that to be—that would be considered in connection with the instalment plan which is carried out.

Q. What do you mean by in connection with the plan by which it is carried out?—A. I should have phrased that differently. I mean the appeal in a good deal of instalment plan advertising is in connection with the representation of low prices, whereas the prices are usually high. Instalment advertising itself is not objectionable.

Q. Will you kindly look at the letter of February 10, 1940, from yourself to Mr. Marks.

The COURT. What is the question about it, Mr. Disney?

Q. Do you ever ask Mr. Marks' opinion as to whether to cancel a license or not?—A. Yes. We may ask as a matter of information.

Mr. DISNEY. I offer that letter in evidence.

278 (Government's Exhibit 33 for identification received in evidence.)

(Paper marked "Government's Exhibit 34" for identification.)

Q. Mr. Brown, what do you mean by the expression "price conscious"?—A. You ask me what I think about it?

Q. Excuse me. Take a look at the letter of February 4, 1938, to you from one of your salesmen, and I ask you what did you understand by your salesman's report that the person is "price conscious"?—A. Why, I understand from that report that he is afraid to ask a proper price or a good price for his services.

Q. Then if he is afraid to ask a good price he would ask a low price, is that not right?—A. Well, I would say he is trying to sell cheap material.

Q. You do not answer my question: When he is afraid to ask a price that means he asks a low price, does it not?—A. When he is afraid to ask a high price it means he asks a low price.

Q. I did not say a high price. I said he is afraid to ask a price. Does that mean he is afraid to ask a high price or afraid to ask a low price?—A. I would say he is afraid to ask a reasonable price.

Mr. DISNEY. We offer that in evidence.

(Government's Exhibit 34 for identification received in evidence.)

279 (Papers marked "Government's Exhibits 35 and 36" for identification.)

Mr. DISNEY. I offer Government's Exhibit 35 for identification in evidence.

(Government's Exhibit 35 for identification received in evidence.)

Q. Will you kindly look at your letter of June 17, 1938, and state what you mean by the expression that the person must conduct his business ethically?—A. That is to conduct the business ethically means to conform with good standards of practice; to give good service to the public, the right kind of service in connection with optical goods; to be fair.

280 Q. Is it not a fact that to conduct his business ethically a man must charge what you term reasonable prices?—A. I would say that he does charge reasonable prices if he conducts his business ethically.

Q. But if he does not charge reasonable prices, does he conduct his business ethically?—A. I would say if he charges unreasonable prices—you mean cut prices?

Q. I am using your expression, unreasonable prices.—A. Unreasonable prices? The motive for charging unreasonably low prices would be a part of the consideration of his ethics. You are talking about general pricing at Univis?

Q. I am using your expression, Mr. Brown.—A. All right.

Q. Can a man charge what you term unreasonable prices and still be considered as ethical? Answer yes or no.—A. No.

Q. I didn't get the answer.—A. No.

Q. Will you kindly take a look at your letter of September 7, 1939, to Mr. Petty? In the fourth paragraph there you state that you have cancelled the license "With confidence of your analysis of the situation, Mr. Petty."

Mr. TOULMIN. If the Court please, this is just repeating what is in the letter.

The COURT. It would seem so to me.

281 Q. Who is Mr. Petty?—A. Mr. Petty is connected with the Barnet-Ramel Optical Company, a Univis wholesaler.

Q. He is not an employee of the Univis Lens Company?—A. No, sir.

Q. And yet you rely upon his analysis of the situation in regard to this cancellation?—A. I can only tell you now what we have here before me.

The COURT. You do not know anything more than appears in the letter, Mr. Brown?

The WITNESS. Not about this case. I see there is a letter preceding, addressed to Mr. Hancock in August, and one in June.

(Government's Exhibit 36 for identification received in evidence.)

Mr. DISNEY. Please mark this for identification.

(Marked "Government's Exhibit 37" for identification.)

Q. Does your company make a practice of cancelling licenses upon the recommendation of retailers?

Mr. TOULMIN. If the Court pleases, we have had that question a number of times.

The COURT. I think so. I sustain the objection.

Q. Do you require Univis licensees to serve a probationary period?—A. No, sir.

Q. Do you require applicants for Univis licenses to serve a probationary period?—A. No, sir.

282 Q. Will you look at your letter of February 22, 1939, and explain what you meant by instructing Mr. Tully to tell the licensee that his appointment was probationary?—A. I made a suggestion to him—I see that.

Q. That suggestion, though, was a suggestion that he tell an untrue thing?—A. I will have to get the whole thing in here and see.

The COURT. We will take a short recess.

(Short recess.)

Mr. DISNEY. I want to offer this into evidence.

(Government's Exhibit 37 for identification received in evidence.)

Q. Mr. Brown, what is the certificate of award?—A. A certificate of award was a metal certificate issued years ago, simply indicating our license had been issued.

Q. Was it ever taken up or taken from a licensee before he was cancelled?

The COURT. Taken back? Withdrawn?

Mr. DISNEY. Yes.

A. It may have been.

Q. Would it ever be taken back except upon assurance by the person taking it that the license would be cancelled?—A. It might be taken up in expectation that the license would be cancelled.

Mr. DISNEY. Please mark this for identification.

283 (Marked "Government's Exhibit 38" for identification.)

Q. Will you look at that and see if that refreshes your recollection there? Have you ever seen that document?

Mr. DISNEY. In this particular instance, your Honor, Mr. Mer-ville took up a certificate of award before the formal letter of cancellation was mailed out. I am offering it to show his authority and to show that he had a pretty firm reason to believe that the company would act upon his recommendation that the license be cancelled.

The COURT. All right. It will be received.

(Government's Exhibit 38 for identification received in evidence.)

Mr. DISNEY. Mark this, please.

(Marked "Government's Exhibit 39" for identification.)

Q. Mr. Brown, when did the Univis Company change from its practice of giving exclusive distributors' licenses to its present form of giving licenses?—A. The Univis Corporation?

Q. The Univis Corporation, excuse me.—A. The Univis Corporation never gave exclusive licenses.

Q. Then do I understand your answer to mean that when the corporation was formed they discontinued that practice of giving exclusive territorial licenses?

The COURT. No, he did not say that. He said the corporation never gave an exclusive license.

284 Mr. DISNEY. I offer these documents in evidence.

(Government's Exhibit No. 39 for identification received in evidence.)

Q. Mr. Brown, do you permit your licensees to cut prices to charity patients?—A. The contract provides for a minimum price. It would be a violation to cut price.

The COURT. I do not hear you.

The WITNESS. I said the contract provides for a minimum price. and it would be a violation of the contract to cut the price.

The COURT. The question is whether you permit it.

The WITNESS. We certainly do not permit it.

Q. Do you permit the licensees to work in connection with a clinic that serves charity patients, or give a discount?—A. That all depends on the circumstances in connection with the service.

285 Q. Can you give the circumstances?

The COURT. Of what case?

Q. (Continuing.) In the case of a clinic in which the licensee would be permitted to retain his license.—A. You mean to give away the glasses?

Q. No; give the glasses away at less than the minimum price.—A. That would not be permissible. That would be a violation of the contract.

Q. Mr. Brown, what is the "NG" list?—A. Well, I would say that is variously referred to as the "NG" list, undesirable list, and there is a "prospect list" which is a better term for it.

Q. Is it a book?—A. It is a list of retailers or wholesalers in a territory visited by our men who make a survey and list the names of those they think are good prospects for Univis licensing and those who they think are not good prospects for a Univis license.

Q. Upon what information do you rely in making up that list?—A. The men would have to tell that. They make the list.

Q. As I understand it, then, they make a list and then send



it to the office?—A. They send them to the office for the office's information.

Q. The list then depends not upon the information of the  
286 license committee but upon information acquired by the  
man in the field?—A. By the man in the field, or it might be  
added to; information might come to us and be added to that  
list.

Q. Then both the licensing committee and that man in the  
field—A. Not the licensing committee; anybody.

Q. Who have access to the list that you describe as anybody?—  
A. The business. The office has access to the list.

Q. Then they all work in conjunction with the man in the field  
in keeping the list up to date as to the undesirables?—A. No; as  
a report from a man is kept independent, if there is other infor-  
mation from another source which comes to the office it would be  
attached to the list, but the list from the man himself would be  
by itself marked as his list.

Mr. DISNEY. I think that is all, your Honor.

Mr. TOULMIN. No cross-examination, if the Court please.

Mr. DISNEY. I would like to call Mr. Hancock.

VIRGIL HANCOCK, called as a witness on behalf of the Govern-  
ment, being duly sworn, testified as follows:

Direct Examination by Mr. DISNEY:

Q. What is your position with the Univis Corporation,  
287 Mr. Hancock?—A. Sales manager for about the past ten  
months, and prior to that supervisor of technical develop-  
ments. I still function in that capacity.

Q. And what is your position with the Univis Lens Company?—  
A. Did I misunderstand your first question?

Q. I asked you first about the Corporation, sir.—A. Oh, I have  
no connection with the Corporation.

Q. Just with the Lens Company?—A. Just the Lens Company.

Q. Did your duties with the Univis Lens Company entail  
arranging for shopping reports?—A. It did.

Q. Will you kindly explain to the Court how you would man-  
age a typical shopping report?—A. Well, take one instance which  
I can recall. I had complaints on this account from three differ-  
ent sources.

Q. Will you give the name of the account, please?—A. Aloe Op-  
tical Company, St. Louis, Missouri. So I went to St. Louis,  
Missouri, in this case specially from Chicago, Illinois, where I  
was working and checked in at the Lennox Hotel and I did not  
advise anybody at St. Louis I was in town, and I gave one of the

bellhops of the hotel a pair of genuine Univis lenses made under the Silverman patent, and one of those lenses I broke. That particular pair of lenses was a pair of lenses which could only  
 288 be manufactured from a special lens blank, which I had reason to believe was not in any stock in St. Louis. So giving the bellhop a dollar for his trouble I sent him to Aloe Optical Company to leave the glasses.

Let me correct that. It was not to Aloe I sent him but it was to Erker's Optical Company, and they accepted the broken lens. Then I got in a taxicab and went out to—out near the ball park, which is the Fair Grounds Hotel, I believe it was, some place out there, but anyway there was an optometrist who had a business there named Gene—I will have to skip the man's last name—Ebeling I believe it was, and I went in there and gave him a broken Univis lens. I naturally did not tell him my name was Hancock, because he might have heard of me, so I told him those were for my father, and he very kindly quoted me a price of \$7.50 or I think \$7 for duplicating the one lens. Incidentally neither Erker's nor Gene Ebeling were Univis licensees, as neither one of those concerns had a contract with us permitting them to complete the manufacture of Univis lenses. So I went back to the hotel and caught up on my magazine reading while I advised the factory that these two special prescriptions had been left for duplication. And I received a telegram from Dayton, where our factory is located, I think on the second day or possibly the third day, advising me that this particular first order had been received by  
 289 Dayton from Aloe's Optical Company, as the Aloe's Optical Company was the suspect. Aloe's Optical Company had been a Univis licensee for, oh I would say ever since I had been connected with the company, and prior to that I had reason to believe.

So when the second prescription came through, armed with this information I walked into Aloe's Optical Company and I had to wait until I could see the manager, Mr. Stevenson, and I confronted Mr. Stevenson with one of the violations, and he was extremely apologetic and stated that it was the one and only time they had ever slipped, as he put it.

By the Court.

Q. I do not see the connection with the depositing of the lens and prescription with Erker's, did you say, and the Aloe Optical Company?—A. Here is the point: Aloe's Optical Company was a Univis licensee. Erker's Optical Company was not a Univis licensee. The broken Univis lens which I had left with Erker's through the bellhop was a particular Univis lens which could only be made from a lens blank, a rough Univis lens blank, which was not car-

ried in any stock by any house in St. Louis, and a jobbing house. Therefore I advised Dayton that they should be on the alert for such a lens blank, and when that order immediately followed for such a lens blank—

290 Q. Order from whom?—A. Aloe's Optical Company.

Q. They were licensees?—A. They were licensees.

Q. Why were not they privileged to order the blank?—A. They were privileged to order the blank but the bellhop had left the glasses with Erker's who were a nonlicensee, and our contract with Aloe's Optical Company provided that they should sell those Univis lenses only to bona fide patients; that the pair of Univis lenses was not a completed article until that pair of Univis lenses had been designed or adapted to a patient's face. Anyway Stevenson admitted that he had violated the terms of the contract by supplying Univis to Erker's and when I confronted him with the second violation he rather profanely admitted that and told me what I could about it. That is a typical example of an investigation for violation of contract.

291 By Mr. DISNEY.

Q. Do you also investigate in similar manner violations about cutting prices?—A. We do.

MR. TOULMIN. I presume it is understood, if the Court pleases, that our objection to this line of testimony is the same as that made to Mr. Brown's testimony? I hesitate to interrupt.

THE COURT. Yes.

Q. Do you endeavor to persuade the retailer to sell you the blanks, or lenses rather, at less than the stipulated minimum price?—A. I have done that.

Ebeling in this case just simply quoted a price.

"How much is this?"

"\$7 or \$7.50." I have forgotten which.

And I said, "Will you please put that on a piece of paper so that I can show it to my father?" And he did it. There was no coercion. I did not plead poverty, if that is what you mean.

Q. Did you instruct the bellhop to plead poverty?—A. No.

Q. Do you ever instruct the person doing the actual buying to plead poverty?—A. No; with this qualification, so that you will be clear: I have instructed—and I cannot recall the instance, but I know there must have been an instance when I have instructed someone to say, "Oh, my goodness, that much?" That is all  
292 that is necessary. Pricecutters invariably are anxious to make a sale.

Q. Have you ever instructed the shopper to say, "I could get those lenses for \$7.50 from someone else"?—A. I do not recall a single instance, and I do not think I have.

Q. Do you recall the shopping of Mr. Atkinson?—A. I recall the name and I recall some of the details.

Q. Do you recall giving instructions that the shopper there should say they were from New Orleans?—A. That is quite probable.

Q. And that they lived at such and such an address in New Orleans?—A. That is quite probable.

Q. And that they should say they could get the same job done for \$7.50 in New Orleans?—A. I do not remember that. You may refresh my memory by something.

Q. I am trying to, but I can't seem to find the paper. I will return to that in just a minute.

About how many shopping jobs do you arrange a month? Can you just give us a very rough approximation?—A. I cannot.

Q. Are there many or few?—A. Well, compared to our list of licensees, they are a very small fraction of one percent.

Q. I am not speaking of percent.—A. Well, they are very few. I have arranged one, only one to my knowledge in the last two months.

Q. Would anyone else arrange such shopping jobs with-  
293 out your knowledge?—A. Oh, yes. Any one of our men in the field might do that. Again, they might arrange it—I think they invariably communicate with us, though, immediately upon arranging it, because it would be no value to them for information purposes if they simply arranged it and did not follow it through by communicating with Dayton and telling us to be on the alert for such and such a prescription.

Q. One other question: In speaking of the shopping job in St. Louis, the wholesaler there was selling to the retailer, is that not right?—A. In this case Aloe's was a retailer. We sold Aloe's direct.

Q. Is Aloe's a finishing retailer?—A. Yes; was.

Q. I take it from that that he had been cancelled?—A. He was.

Q. As a result of the shopping?—A. Yes.

Q. Do you usually cancel upon the completion of a successful shopping?—A. No; there are exceptions to that. The answer is that we do not always do that. Some time we find this—that there has been an error, and you may find instances where we have spoken to the man—such as I attempted to speak to Stevenson—and he promised to go and sin no more. Stevenson was not so inclined.

Mr. DISNEY. That is all. I am hunting up a document.

The COURT. Cross-examination?

294 Mr. TOULMIN. No cross-examination, sir.

The COURT. That is all.

Mr. GLICKFELD. Mr. Marks.



ROY MARKS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. GLICKFELD:

Q. Mr. Marks, by who are you employed?—A. Univis Lens Company.

Q. Are you employed at all by the Univis Corporation?—A. No.

Q. How long have you been employed by the Univis Lens Company?—A. Since March 1, 1932.

Q. In what capacity have you been so employed?—A. The first eighteen months of my employment I worked in the factory; the balance of that time I had been employed as a technical sales engineer.

Q. And what are your duties in connection with being a technical sales engineer?—A. Well, my duties consist of promoting the sale of Univis in the territory which has been designated to me; also to call on new prospects to investigate complaints; to lecture at the various institutions of learning that are training and churning out men in the field who are to fit the glasses, also to  
295 instruct surface men and dispensing opticians in proper grinding and fitting of Univis and duties similar to that.

Q. Now, referring to your duties in the investigation of certain retailers, will you explain that more fully, please?—A. Well, many times a wholesaler will suggest that I make a call on a retailer with whom they are doing business with the possibility of granting a Univis license, in which case my duty is to call on the man and discuss the matter with him.

Other investigations—

Q. And what is the nature of that discussion?

Mr. TOULMIN. I am afraid he did not finish his answer.

Mr. GLICKFELD. I beg your pardon. I did not mean to interrupt.

Q. Just continue with your answer.—A. Other investigations involving investigation of violations of policy that are reported to me; and I imagine I would use the word "investigate" in connection with trouble shooting in the various surface shops to find out.

Q. Directing your attention to the investigation of retailers who are not yet licensees, what do you do in carrying out that investigation?—A. My first thought is always to make a call on the man and discuss with him the ideas he has in connection with the use of what we term the better type or more modern type of bifocal.

296 Q. What does that mean?—A. That means simply to find out in what classification in his mind he places the better type; whether he feels it is a lens that he wants to use; for what



type of cases he has in mind using it; and whether he feels it is just a lens that he heard about and would like a little more information on. In other words, to find out exactly how seriously inclined he is toward the idea.

Q. And when you have an instance where the man is seriously inclined toward the idea, do you ascertain any other information during this investigation?—A. Yes; I attempt to find out if his regard for the public is paramount in his mind, or whether his regard for himself is the only thing that he is thinking about.

Q. Now, you distinguish between having regard for the public and having regard for himself?—A. Yes. In many cases I have come across men whose primary interest is only to—shall I say—think in terms of making money on the products that they sell or dispense regardless of the quality of those particular products or whether they do the patient any good or not. In many cases we also run into men who are primarily interested in the thing that we have to sell, that being a product that is of primary benefit to the public and, of course, if they are the type that are interested primarily in service first, naturally that class of man will be interested in the proposition that we have to offer.

297 Q. Does your last answer mean that you try to ascertain whether the particular patients of the retailer can properly use a Univis lens so that it will not harm their eyes?—A. Well, that would not be for me to ascertain. My primary interest is whether the man himself is interested in using the better type of lens in order to correct his patient's visual defects.

The Court. We will take a recess now to 2:00 o'clock.

(Recess until 2:00 o'clock.)

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#### AFTERNOON SESSION

ROY MARKS, resumed the stand.

Direct examination continued by Mr. GLICKFELD:

Q. Mr. Marks, will you continue your testimony concerning the description of your investigations of prospective retailer licensees.—A. Well, my investigation, as I said, primarily consisted of determining the man's attitude toward our product, and also toward his patients in connection with the type of product that he was in a habit of prescribing for their visual needs.

Q. What do you mean by that latter?—A. Well, it is my opinion that a man who is not interested at all in quality, but primarily interested in how cheaply he can buy a product, could not do justice to a product such as ours.

Q. And why not, sir?—A. For the simple reason that he is interested in nothing but the price of the product that he buys

and he is in the market only for cheap optical merchandise, which we do not make.

Q. Then you determine at the outset whether he would want to handle a product which is as expensive as yours?—A. I would not say as expensive.

Q. What would you say?—A. I would say as high a quality as ours.

Q. That has to do with quality, but I understood your 299 testimony to have something to do with price.—A. Yes; the price to him which I think is rather an index today of the quality of the product; in most cases at least.

Q. And do you make any other inquiries concerning the retailer applicant?—A. Yes. As to—probably not directly—

Q. I am referring to the direct inquiries when you visit the retailer applicant himself.—A. Primarily if he is interested in using our lines, and of course I always make inquiry into his knowledge of fitting, which is a very important thing in our product; because it is—well—

Q. What do you do in exploring his knowledge of fitting?—A. Usually engage him in conversation along those lines.

Q. And what are the typical questions that you ask him?—A. I ask him what his ideas are of fitting a bifocal lens; for instance in regard to whether he pays any attention to the individual's need for the work they are going to do. That is one idea, because if he does not of course it is hardly probable that he can properly fit our lenses, if he does not take into consideration that individual's work or that individual's needs—along that line?

Q. Yes. Will you continue.—A. Another thing, whether he 300 is cognizant of the fact that in many cases a condition exists called anisometropia. If he is—

Q. Will you explain what that is?—A. Yes. Anisometropia is a difference in the error of refraction in each eye. That is to say both eyes are not alike, in which case, unless fitted very exactly with one phase of the Univis service, the patient cannot get complete comfort from his or her glasses, and if I find in that instance that he is not interested at all in things of that sort, that his primary interest is fitting a pair of "specs," using the vernacular, and that is all, regardless of how much good they do, obviously the Univis service that is available to him will not be of any great use.

Q. Do you explore any other fields concerning this particular retailer applicant and do you try to find out any additional information from him?—A. Well, that is rather hard to say. Along what particular lines?

Q. I am just trying to inquire concerning a typical investigation that you make of a typical retailer applicant.—A. Yes. I can say that I am also interested in whether he feels that he can use Univis in his practice or whether he is primarily interested in an occasional duplication only.

Q. Do you find out about how many pairs he can sell?—A. I never do; no. I do not believe that that can be predetermined accurately.

Q. Do you try to find out any other information?—  
301 A. Nothing that I think of that is of primary importance now.

Q. Do you make any other investigation concerning the applicant?—A. I usually inquire through his supply house or wholesaler as to the type of man he is from the standpoint of use of his products, his promptness in paying his bills, and also his general reputation among his professional brethren.

Q. Reputation for what, sir?—A. For being a good practitioner primarily,

Q. You mean in his ability to refract?—A. No; not especially, although that is a point. Primarily his ability to properly dispense a pair of glasses.

Q. And do you make any additional investigation?—A. No. I think I can say that those are the major points of my investigation.

Q. And having made that investigation what do you do next so far as that particular applicant is concerned?—A. Well, in many cases, if it is rather obvious to me that the man is the type of man that will do justice to our product, and that understands fully the service that he can render with it, and will handle it in the way that we feel he should, I tell him at that time that his application will be O. K.'d by myself and will be sent in.  
302 to the Univis Corporation for further consideration, and that he may expect to hear from them shortly.

Q. And do you send his application to the Corporation?—  
A. I do.

Q. And do you also send in your report?—A. Yes; I do.

Q. Do you know whether the Corporation itself tries to ascertain from other sources information concerning this applicant?—  
A. Yes. I believe they do. In some instances—may I clarify that question in my mind?

Q. Oh, surely.—A. Will you repeat it, please?

Q. (Read.)—A. In some cases I believe they have.

303 Q. Can you generalize at all in telling us in what cases they do make additional investigation?—A. If I go into a territory that I have not previously traveled in, it might be that

that particular applicant has had previous correspondence with the company, or there has been some previous state of affairs. In a case like that they would have previous information that they would relate to me in consideration of the license.

Q. But so far as you know, in most instances there is no additional investigation so far as the applicants are concerned that you have investigated?—A. As far as I know there is not in most instances.

Q. Have you ever tried to ascertain what the price activities were of the particular applicant?—A. In order to answer that, I would have to make a statement which might help us both, and that is this: In mentioning price activities, we think of it in two ways. His regard toward a price, meaning the cost of the product that he is using and, secondly, his regard toward price to the public.

Q. Let us consider them both in the order that you have presented them.—A. Yes. I have previously stated in my other testimony that I did consider his regard for price to him. That was part of my investigation and conversation with the man.

Q. To ascertain whether he was willing to pay the  
304 amount that the wholesaler would charge him?—A. No; to ascertain whether he was primarily thinking of price only when he ordered a lens, or whether he was thinking of service or ly.

Q. Can you clarify that at all, when you say, try to ascertain when he is thinking of price to him only—

The COURT. Don't you think that has been sufficiently covered? It has been gone over repeatedly.

Q. Then going to the second aspect of the price, what do you try to determine concerning his prices to the public?—A. Well, many men do not have any thought by ourselves in that matter because generally a good many men we do not worry particularly about with respect to their price to the public. Many others, however, are in the habit of cutting prices for one specific purpose, and that is to undermine or get the business away from competitors in their particular vicinity.

Q. Am I to understand that you try to ascertain whether the particular applicant is a price-cutter?

Mr. TOULMIN. If the Court please, may I interrupt and object to the repetition? We have had this same question numerous times.

The COURT. Yes, I sustain the objection.

Mr. GLICKFELD. I was just trying to—

The COURT. Oh, no. We cannot go on ad nauseam.

305 Mr. GLICKFELD. I would like to have that marked for identification, please.

(Marked "Government's Exhibit 40" for identification.)

Mr. TOULMIN. I observe, if the Court pleases, that we are about to get into another series of letters and correspondence, and we will have a very lengthy proceeding if we continue these repetitions. Now, this is another piece of correspondence similar to what is already in evidence. One is sufficient, I respectfully suggest, and is typical; and if the rest of them are like that, why, they are purely cumulative; so, therefore, I take the liberty of objecting to this line of testimony.

The COURT. Is this cumulative testimony?

Mr. GLICKFELD. No, your Honor. I have very few pieces of paper, and I am merely going to ask the witness to explain certain terms and phases which he has used in his reports to the company.

The COURT. Please do that, and do it rapidly and briefly. Give him a half a dozen, or whatever you have, three or four, and let the questions be put and the answers given.

Q. Do you identify that as a report which you made?—A. I do.

Q. Will you explain what you meant when you wrote "Just  
306 ammunition for the opposition"?—A. That phrase has been used by me so seldom and so long ago, that I will have to think a minute: I should say that by that I meant that our own particular competitors who know that one of the things that we pride ourselves in, and continually remind the doctors whom we have licensed, or the retailers whom we have licensed—one of the big things we pride ourselves on is the fact that Univis is handled by the better type practitioners; that is, men who are sincere and are desirous of doing what they consider and most consider a very fine job of fitting these better lenses. And obviously, a competitor finding that to the contrary, in many cases might use it to knock down the presentation of Univis to our customers or our accounts.

Mr. GLICKFELD. I offer this in evidence, your Honor.

(Government's Exhibit 40 for identification received in evidence.)

Q. I hand you Government's Exhibit 25 and direct your attention to the handwritten note on the letter dated April 14, 1938, and ask if that note is written in your handwriting?—A. My handwriting?

Q. Yes.—A. No. You refer to the note in the right-hand upper corner?

Q. That is right.—A. No.

Q. Do you know whose handwriting that is in?—A. I  
307 cannot honestly say. I believe it is Mr. Brown's.

Q. Do you recall having had conversations with Mr. Brown on or about the time this letter was written?—A. I cannot honestly say so; no. I do not recall the conversation.



Q. Do you recall having made an investigation of a Dr. Fouts, which Dr. Fouts is the subject matter of the Exhibit No. 25?—A. I do not.

Q. Will you see if you can refresh your recollection by glancing at the exhibit.—A. I still do not recall the exact conversation that I had with Mr. Brown.

Q. Do you have any general recollection of having a conversation with him?—A. I may have.

Q. Will you be able to explain the handwritten note?

Mr. TOULMIN. What is that question?

(Question read.)

Mr. TOULMIN. If the Court pleases, he said that was not in his handwriting; it was not his note; and therefore, if he did not write it and the note is somebody else's, the best evidence is the note itself and not his understanding of it.

The COURT. Yes; I sustain the objection.

Q. Mr. Marks, do you have any recollection of having told Mr. Brown that Dr. Fouts cut prices on Univis lenses under pressure?—A. No, sir.

308 Q. Is it part of your duties, Mr. Marks, to engage in shopping Univis licensees?—A. No; it is not, as a general rule.

Q. Have you ever engaged in shopping Univis licensees for the Univis Corporation?

Mr. TOULMIN. If the Court please, we went all over that before.

The COURT. I think so. What difference does it make whether he did it or somebody else?

Mr. GLICKFELD. That is all.

Mr. TOULMIN. No cross.

MILTON T. SILVERMAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

(Paper marked "Government's 41" for identification.)

Direct examination by Mr. DISNEY:

Q. You are an employee of the Univis Lens Company; is that right, Mr. Silverman?—A. That is correct.

Q. And as one of your duties you investigated complaints against violations of the system?—A. Very rarely.

Mr. TOULMIN. If the Court please, we have been through this a number of times and I object to it.

309 The COURT. What do you expect to prove by this witness?

Mr. DISNEY. We have about three pieces of paper on which I want to ask about three specific phrases.

The COURT. Give him all the matters at once and have the questions put.

You are with the Lens Company, Mr. Silverman?

The WITNESS. Yes.

The COURT. And what is your office there? What do you do?

The WITNESS. I am a field manager in this eastern zone. I do mostly educational work.

You showed me only one paper here.

Q. That is right, and I will give you the other in a moment. Do you identify that as a sales report written by yourself?—

A. Yes.

Q. What do you mean by the expression that a man is a "chiseler"?

Mr. TOULMIN. We object, your Honor. We have been all through the chiseler question.

The COURT. I do not recall that particular term.

Mr. TOULMIN. I thought Mr. Jack Silverman testified at length on it yesterday but maybe I am wrong.

The COURT. Perhaps so, but I have forgotten it if he did.

A. Well, this was in 1933, and when I said "chiseler" why I presume I meant the same thing as if I said chiseler now. It is my way of saving time and not writing out a lengthy report to designate that this is the type of man who simply does not conduct an honest type of practice, in my opinion.

Q. In which way is he dishonest?—A. It may be in various ways. He may be dishonest to the extent that he use very inferior grade merchandise and gets extremely high prices for it. There may be any number of ways that he could be dishonest.

Q. Then you use "chiseler" as synonymous with dishonest?—

A. Not just synonymous with dishonest; I would say shady practices.

Mr. DISNEY. I offer that letter in evidence.

Mr. TOULMIN. Subject to my standard objection?

The COURT. Yes.

(Government's Exhibit 41 for identification received in evidence.)

Q. I believe you identified that report as being in your handwriting.—A. Yes.

Q. What do you mean there by "questionable tactics"?—A. Just the same thing that I just defined; shady tactics; questionable tactics; dishonesty. I am merely trying to save time in these reports, because these reports are usually made out at night and I am tired after my day's work and I do not want to take my entire evening writing out check-up reports.

(Papers marked "Government's Exhibits 42 and 43" for identification.)

Mr. DISNEY. I offer Government's Exhibit 42 for identification in evidence.

(Government's Exhibit 42 for identification received in evidence.)

Q. What do you mean here by "NG"? Is that on the report?—

A. It is here; yes. That was in 1933 and "NG" is a simple way to report as in the previous report.

Q. That he is a price-cutter and no good, right?—A. Yes.

Mr. DISNEY. I offer that in evidence.

(Government's Exhibit 43 for identification received in evidence.)

Mr. DISNEY. That is all.

Mr. TOULMIN. No cross-examination.

NORMAN A. LABELLE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. GLICKFELD:

Q. Where are you presently employed, Mr. LaBelle?—A. Brooklyn Academy School of Optics, Gillis Optical School, 312 in Brooklyn.

Q. How long have you been connected with the school?—

A. Some time, but at first I was only working night work. For some time; about a year.

Q. And what did you do before you became connected with the school?—A. Well, I have been an optician for the last thirty years.

Q. Were you a practicing optician?—A. Oh, yes.

Q. And what are your present duties at the school?—A. Mechanical optician. I am in charge of the lab, teaching how to make glasses.

Q. What school did you go to before you became an optician?—

A. None. I started from errand boy and I reached up doing odd work with the American Optical Company. Does that answer it?

Q. You say you worked for the American Optical Company?—

A. Yes.

Q. In what capacity?—A. From errand boy to manager.

Q. Manager of what?—A. Of branches.

Q. Where were those branches?—A. All over Canada and Brooklyn and New York City.

Q. As part of your teaching duties at the Brooklyn School of Optics, do you teach the laying out of lens blanks?—A. That is right.

Q. And in teaching the laying out of lens blanks, do you 313 differentiate between various types of lens blanks?—A. Yes, sir.

Q. Can you tell us now how you differentiate in your teachings in the laying out of the various lens blanks; particularly the bifocal lens blanks?—A. Bifocals to be laid out would be to mark it before it goes to the surfacer. The laying out of bifocals we could most likely classify it in two groups; the type with the segment on the outside and the type with the segment on the inside, and also the type with the flat top and the type with the round top.

Q. What blanks would you include in that type with the flat top?—A. The Univis, the Widesite, the Panoptik, the Ful-Vue—all that type.

Q. What blanks would you classify as the round top?—A. The Kryptok, No-Chrome, 'L.' and 'B' Ultex.

Q. And in your teaching of the laying out of the flat top bifocal lenses do you differentiate one lens blank from another?—A. Oh, yes.

Q. And will you describe how, in your teaching, you differentiate between the various types of flat top bifocal lenses.—A. Well, that is a pretty tall order.

Q. How would you differentiate the laying out of a Univis blank and a Ful-Vue blank, assuming you were laying them both out for the identical prescription?—A. The Ful-Vue or a Univis or Panoptik, any flat top, will be marked in laying off the same way. I will include in that not only flat top, but I will include 'L.' and 'B.' Altex which will be marked the same way by moving it over while the other round top will be turned. That is the only difference in the laying out.

Mr. GLICKFELD: That is all.

Mr. TOULMIN: No cross-examination.

WINSTON C. JUENGST, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. GLICKFELD:

Q. Dr. Juengst, where are you presently employed?—A. Brooklyn School of Mechanical Optics.

Q. How long have you been connected with that school?—A. Since the fall of 1937.

Q. And in what capacity are you connected with the school?—A. Instructor in optics—theory.

Q. What does the school teach?—A. Oh, we teach the elements of ophthalmic optics that is optics as applied to spectacle lenses.

Q. Is that school connected with New York University?—A. Not to my knowledge.

Q. Is it connected with any university you know of?—A. Not to my knowledge.

315 Q. What was your experience before became associated with the school?—A. Well, I am a graduate of the University of Rochester, Institute of Optics, and I have worked with several optometrists.

Q. In what capacity did you work for them?—A. As an optometrist and as an assistant to an optometrist.

Q. What do you teach at the school?—A. I teach principally the lecture work; that is the theoretical and classroom aspects of the work.

Q. What does that include specifically?—A. Well, that is all the basic optical theory of spectacle lenses.

Q. Do you also teach the aspects of the finishing of the lens blank to the lens?—A. Yes; also some shop work and some fitting and adjusting.

Q. By the shop work do you mean you teach the students how to take a blank and finish it into a lens?—A. That is we take the uncut lens and finish it into the finished shape, and so forth, for wearing.

Q. Do you teach them concerning the surfacing and polishing?—A. No; not at present.

Q. Have you ever done that?—A. Yes; as an assistant in the University of Rochester in the optical shop there.

316 Q. You taught the surfacing and polishing?—A. Well, as an assistant to the shop instructor there.

Q. From your experience as a teacher, do you know what differences exist in the completion of a semi-finished Univis bifocal blank to the lens, and any other of the flat top bifocals such as Ful-Vue and Panoptik?—A. I would say that there was no essential difference between the various types that you mentioned.

Q. Is there any difference at all that you can point out for us?—A. Well, I might suggest that the differences, if any, would be extremely minor.

Q. What is it?—A. For example, the Univis segment uses flint glass, and some, like the Panoptik, use the barium crown glass; and the difference; the hardness of the glass, may take some very minor adjustments in the working of it; particularly the finishing, the edging process.

Q. Would those differences that you have mentioned in the glass itself make for any differences in the surfacing, the polishing or grinding of the lenses?

Mr. TOLMIN. If the Court please, I object to the continuation of this line of testimony for the reason that the question of the particular kind of glass, and those details, is not an issue here. If the manufacturing operations are performed to bring this blank



into its final lens form, that is an ultimate fact, and the  
317 details are not important, I submit to the Court.

The COURT. They are not important, but if the testimony is not to be drawn out, I will receive it.

Q. I just want you to point out the differences that you believe exist—

The COURT. I thought he had pointed them out.—A. Yes; I have.

Q. And those are the only differences that you know of?—A. Yes; that I know of, yes.

Mr. GLICKFELD. That is all.

Mr. TOULMIN. No cross.

### *Colloquy*

Mr. McCracken. May it please the Court, our next witness has been told to be here, but he has not as yet appeared. We have reason to believe that his testimony would be very relevant to the issues. He is a licensee of the Univis Company, and it is our intention to show through him that certain matters denied in the answer are, at least, otherwise in his opinion.

With the Court's permission we would like to take our recess now with the hope that he may come during the recess.

The COURT. Is there another witness available?

Mr. DISNEY. Is Mr. Goldberg here?

Mr. TOULMIN. I thought, your Honor, we might expedite this matter and see if I can agree as to any of these  
318 matters.

The COURT. Yes. We will take a few minutes recess.

(Short recess.)

Mr. DISNEY. Your Honor, after talking it over with my colleague, and due to the nonappearance of the witness, I should like to ask for an adjournment to Monday morning, with the statement at that time the Government can finish the presentation of its case in about an hour. And the reason we cannot do it now is, first, due to the nonappearance of a witness who was told to appear later—and that is my own fault—and second, due to the fact that I put in the papers much quicker than I anticipated it would take.

I should dislike very much closing the Government's case until I have had an opportunity to read the record thus far made and very carefully study it. I should say this, that I believe, and am confident, that we can finish our case by eleven or, rather, twelve o'clock Monday.

The COURT. Isn't there anything more you can do this afternoon?

Mr. DISNEY. Apparently there is not, until we get Mr. Potter who is due here at three. We granted him an unusual indulgence due to the fact that he is the manager of a very large wholesale store, and he explained it would be a great hardship to take him away from his business; and not expecting to need him before three, we told him to be present at that hour.

The COURT. Well, we will wait a few minutes for him. Is he on the way?

Mr. McCracken. May it please the Court, Mr. Potter is apparently not on his way. I phoned during the recess and was told by someone in his office that they had been unable to reach him since he went out for lunch, and that he had not gone to any of his usual places, and though they had made every effort to find him, they could not do it. I left a message for him to come immediately if he should return, and that is the present status of the matter.

The COURT. He is not under subpoena?

Mr. McCracken. He is under subpoena, your Honor. The subpoena was extended, in accordance with our agreement with Mr. Potter, as indicated by Mr. Disney.

Mr. DISNEY. That is a slip up, and wholly my responsibility, and I can only apologize to the Court.

The COURT. We have out-of-town counsel, and I suppose, out-of-town witnesses, and it is very regrettable that there should be this delay.

Mr. DISNEY. I understand thoroughly, but I doubt that the defendants could complete and put in their case in the hour that remains of the afternoon session; so that in the regular course it would have to go over to Monday anyway.

The COURT. What further proof do you expect to adduce?

Mr. DISNEY. We expect to introduce evidence from Mr. Potter, first, corroborating what the gentleman from the Brooklyn school testified and, second, outlining the duties of a Univis distributor. That is what we expect to adduce from Mr. Potter.

The COURT. The duties of a Univis distributor. Is he a distributor?

Mr. DISNEY. He is a distributor, sir.

The COURT. What do you expect to show his duties are? Perhaps they will be stipulated. I do not understand what duties you mean. You mean contract obligations?

Mr. DISNEY. First, we want to show that in processing the Univis blank into the finished lens he does and follows absolutely the same method that he would in processing other lens blanks and finished lenses. I am quite willing to stipulate that fact and be glad to stipulate it so that we would not need to wait for Mr. Potter.

The COURT. What else? Is that the sole purpose?

Mr. DISNEY. That is the primary purpose, sir. We are  
321 putting in a practical man, you might say, to go with our expert.

The COURT. Mr. Toulmin, what have you to say as to the suggestion that there be stipulated the testimony of Mr. Potter, that in the processing of a rough lens blank he would give the Univis lens the same treatment that he gives other lenses?

Mr. TOULMIN. I cannot stipulate that, if the Court pleases, for the reason that I have talked to Mr. Potter some weeks ago, not knowing he was going to be called as a Government witness, and have inspected his plant, and to my personal knowledge, from what I saw that is not the fact. Otherwise, I would be willing to stipulate it.

The COURT. What in the way of exhibit proof is there still to be offered?

Mr. DISNEY. You mean the exhibits?

The COURT. Are you going to do anything more than just offering Mr. Potter's testimony?

Mr. DISNEY. We will show also that he received no instructions from the Univis Lens Company on how to grind and process the blank.

The COURT. I say, is there anything beyond Mr. Potter that you want to offer?

Mr. DISNEY. Also we intend to call a retail witness.

The COURT. Where is he?

Mr. DISNEY. He should be here.

322 Is Mr. Goldberg here?

(No response.)

The COURT. What do you expect to prove with this retailer?

Mr. DISNEY. With the retailer we intend to show simply the functions they perform, and to show that he performs his functions and duties under no instructions from the Univis Company; to show that he operates, in filling a Univis prescription, absolutely the same as he operates in treating patients with other lenses.

The COURT. Are there any more letters to be introduced?

Mr. DISNEY. There are other letters which we do not intend to introduce and discuss, but the letters which were introduced today were introduced as typical letters. And those that I intended to introduce Monday, would be just put in.

The COURT. Put in wholesale?

Mr. DISNEY. That is right; no discussion.

The COURT. Are those ready now for introduction?

Mr. DISNEY. They are not. They were the letters which were discussed by Mr. Glickfeld and Colonel Toulmin this morning and Mr. Glickfeld can tell better about them than I.

Mr. GLICKFELD. Mr. Toulmin and I, your Honor; 323 did agree upon the introduction of a huge mass of documents and thereafter we thought that rather than clutter up the record with so many that we, ourselves, would spend some time during the week-end trying to use about one-fifth or one-sixth of those documents because we did agree upon several hundred documents which would, I think, unreasonably clutter up the record.

The COURT. I don't suppose you care to go on now, Mr. Toulmin?

Mr. TOULMIN. No, your Honor; not until the Government has finished. I might say that I took the liberty, being a little older lawyer than Mr. Glickfeld, to suggest that if he did have the time to put in over this week-end that it would be a good thing if he could save the burden on everybody by reducing the number of those letters, if possible. I thought that was proper.

The COURT. Then we will take an adjournment until Monday at 10:30 A. M.

(Adjourned to Monday, June 9, 1941, 10:30 A. M.)

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NEW YORK, June 9th, 1941.  
10:30 o'clock a. m.

Trial resumed.

Mr. GREER. May it please your Honor, on Friday counsel for the plaintiff filed with your Honor a brief relating to the question of the admissibility of the evidence as to the intent and motive of the defendants, and over the week-end we have prepared a very short memorandum in reply to that brief pertaining to that feature of the evidence, particularly Plaintiff's Exhibits 15 through to 43 inclusive; and we have furnished counsel for the Government with two copies of this memorandum, and would like the privilege of submitting it to the Court with somewhat of an apology as to its appearance, for it was prepared away from home over the week-end with such stenographic help as we were able to commandeer at the hotel.

The COURT. That is quite all right.

Mr. GLICKFELD. The Government has also been somewhat busy over the week-end, your Honor, and we managed to cull through the 1,500 documents that we had taken from the files of the 325 defendants; and we should like to offer as two exhibits—the first exhibit, a group of documents relating to the typical advertisements of the defendants, typical cancellations, and typical refusals, and typical statements of their policy. These have all come from the files of the defendants, and I understand there will be no objection made as to the authenticity or the genuineness of such documents, subject, of course, to the check of counsel, because I merely gave them a complete list of these documents this morn-

ing, and they have not yet had an opportunity to check through to see that they all did come from their files. And I would like to offer that group as one exhibit.

I also would like to offer as one exhibit a group of documents written by Mr. Merville who is deceased, and as Mr. Disney pointed out in his examination of Mr. Brown, we had contemplated putting all of the Mr. Merville letters in as one exhibit; and we also have culled through his, and picked out what we thought were the typical ones which he had written. I would like to offer that as one exhibit.

Mr. TOULMIN. Are you through, Mr. Glickfeld?

Mr. GLICKFELD. Yes.

Mr. TOULMIN. If the Court please, we object to the introduction of these documents in evidence as merely being statements  
326 of policy, or reasons for cancellations, and similar matters heretofore discussed. If the patent licenses are good, why, the matter of cancellation or the reason for it, the motives or policy, have nothing to do with the issues in this case.

The COURT. Well, I reserve decision on the objection that you urge, and they will be received temporarily.

Mr. TOULMIN. Yes, your Honor.

(Marked "Government's Exhibits 44 and 45.")

Mr. GLICKFELD. Your Honor, Mr. McCracken of the Government's staff, will now examine Mr. Potter.

AALON A. POTTER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCracken:

Mr. McCracken. May I proceed, your Honor?

The COURT. Please.

Q. Mr. Potter, what is your present occupation?—A. I am a wholesale optician.

Q. With what firm are you connected?—A. Potter & Schnackenberg.

Q. Do you have a finishing shop at Potter & Schnackenberg?—A. We have.

Q. What is the size of the shop?—A. You mean in area?

327 Q. How many men do you employ?—A. Approximately, all told, about 50.

Q. Is that the largest independent wholesaler shop in this vicinity?—A. I think it is.

Q. Mr. Potter, have you ever been a dispenser?—A. Yes, I have.

Q. Will you tell the Court briefly your experience as a dispenser.—A. Well, I learned the trade in a dispensing house, and



from there graduated into wholesale business. I was with this dispensing house for nine years. That is about thirty years ago.

Q. Pardon me, have you finished?—A. Yes.

Q. What was the nature of your work as a dispenser?

Mr. TOULMIN. If the Court please, we have no objection to admitting that Mr. Potter is a quite competent person in this field.

The COURT. Qualified in all respects, is that right?

Mr. TOULMIN. Yes.

Mr. McCRACKEN. I accept that.

Q. How long have you been a wholesaler?

Mr. McCRACKEN. The objection goes to this continual line of questioning?

The COURT. There is no objection. There is an admission of qualification, or concession.

328 Mr. McCRACKEN. I wonder if that would attach even to this form of question.

The COURT. I beg your pardon?

Mr. McCRACKEN. I wonder if that would also attach to this particular question. I have no desire to go into anything Colonel Toulmin wants to stipulate.

Q. Are you a Univis licensee, Mr. Potter?—A. I am.

Q. What is the nature of the license you hold?—A. I am permitted to sell blanks wholesale and grind them and manufacture them for the trade.

Q. Then you are a wholesaler licensee?—A. I am a wholesaler licensee.

Q. How long have you held that license?—A. Well, ever since—at least ten or twelve years; I do not know the exact date. Since the Univis have been put on the market.

329 Q. Do you recall the time at which the license was issued to Potter & Schnackenberg?—A. Yes; I do.

Q. At that time did you have reason to believe that all the licenses would be identical?—A. Yes; I did.

Mr. TOULMIN. If the Court please—

Mr. McCRACKEN. He has answered, your Honor.

The COURT. Strike out the answer. I sustain the objection.

Q. How many pairs of Univis lenses per year do you buy from the Univis Corporation?

Mr. TOULMIN. If your Honor please, I think that is immaterial to this issue.

The COURT. I think it is. I sustain the objection.

Q. Do you buy Univis lens blanks in the rough condition from the Univis Corporation?—A. Yes, sir.

Q. Do you also buy them semi-finished?—A. Very few.

Q. Have you ever bought them from anyone but Univis?—  
A. No.

Q. What is the reason for you buying them very frequently in the rough shape more than in the semi-finished shape?—A. Well, they all have to be specially ground and we have to make the size segments to the individual customers' requirements and in semi-finished they would come probably in one size and that would not answer our purpose at all.

Q. Do you buy Panoptik so-called flat tops?—A. Yes.

Q. Do you buy them rough or semi-finished?—A. We  
330 buy those semi-finished.

Q. Have you ever bought them rough?—A. Never.

Q. Do you buy Ful-Vue semi-finished?—A. Semi-finished only.

Q. Do you buy Kryptok bifocal blanks?—A. Yes, sir.

Q. Will you describe the Kryptok blank in simple terms?—  
A. The Kryptok blank is merely a lens ground of two parts, both flint and crown, the flint being the reading segment, and it is a round, circular segment.

Q. Is it an unpatented lens?—A. It is at present. The patent has expired.

Q. And you grind them in your shop?—A. We do.

Q. What does the Kryptok blank cost you a pair in rough shape?

Mr. TOULMIN. If the Court please, I think we are now investigating the Kryptok lens and I make the same objection.

Mr. McCracken. If I may address myself to that, your Honor, we have made a point in our complaint that the price of the unpatented lens shows a great discrepancy from the price charged for the Univis lens.

The COURT. I sustain the objection.

Mr. McCracken. If the witness's testimony has been admitted, your Honor, the Government would have shown that the  
331 price of the Kryptok per pair in the rough condition is 62 cents and in the semi-finished shape it is \$1.13 a pair, as compared with the \$3.25 per single lens price of the Univis blanks.

The COURT. I will consider that as an offer of evidence and I sustain the objection.

Mr. McCracken. Thank you, your Honor.

Now, if your Honor please, I would like to draw out through Mr. Potter the steps which he goes through, which his shop performs, in finishing all the various lenses. I do not believe it has been proved in the form we will do it here. It has not been done through a wholesaler licensee and the Government would like to show that there is no difference in work done on the various makes of blanks, if your Honor would permit that line of questioning.

**Q.** Mr. Potter, can you give us a short definition of the finishing process; that is, what does the finisher do and what is the finishing job?

**Mr. TOULMIN.** If the Court pleases, so long as this inquiry is confined to the Univis, and any process used in manufacturing for the Univis by Mr. Potter and his organization, I have no objection. If it is, however, to go into the question of what other blanks are used and how they are used and how manufactured, I cannot see that it is pertinent to this inquiry at all.

**The COURT.** I do not either.

332 **Mr. McCracken:** My question, the one immediately before us now, was a matter of defining. In the answer of the defendants we have been left to our proof as to the definition of finishing which we set out in our complaint. My first purpose was to get to that point.

**The COURT.** I do not think it makes very much difference what you call the operation or series of operations. It is quite proper for you to interrogate the witness in respect of such act or acts as he covers in his shop, and you may do that.

**Mr. McCracken.** Very well, your Honor.

**The COURT.** But I am not particularly concerned with what term is given to that series of acts.

**Mr. McCracken.** I would like to have this Univis blank marked for identification.

(Marked "Government's Exhibit 46" for identification.)

**Mr. McCracken.** I would like to have this Univis lens marked for identification.

(Marked "Government's Exhibit 47" for identification.)

**Q.** I show you Government's Exhibit 46 for identification, and ask you to identify it.—**A.** That is a rough Univis blank.

**Q.** Is that the shape in which you buy that blank from the Univis Company?—**A.** The shape in which we buy it from the Univis Company.

333 **Mr. GLICKFELD.** I ask that it be received, your Honor.

**Mr. TOULMIN.** No objection, your Honor.

(Government's Exhibit 46 for identification received in evidence.)

**Q.** I show you Government's Exhibit 47 for identification and ask you to identify it.—**A.** This is a semi-finished Univis blank. That is ground on one side, on the segment side. The other side is just clear—no grinding.

**Q.** And that is the type of semi-finished made up from Univis?—**A.** Yes, it is only ground on one side.

**Mr. McCracken.** I offer this in evidence.

**Mr. TOULMIN.** No objection.

(Government's Exhibit 47 for identification received in evidence.)

(Lens blank marked "Government's Exhibit 48" for identification.)

Q. I show you Government's Exhibit 48 for identification, and ask you to identify it.—A. That is another type of Univis lens—type B.

Q. What type of Univis lens is that?—A. That is Type B.

Q. What type were the two preceding lenses?—A. Univis D.

Mr. TOULMIN. That is a rough blank?

The WITNESS. A rough blank.

334 Mr. McCracken. I move the admission of Government's Exhibit 48 for identification.

Mr. TOULMIN. No objection.

(Government's Exhibit 48 for identification received in evidence.)

(Lens blank marked "Government's Exhibit 49" for identification.)

Q. I show you Government's Exhibit 49 for identification and ask you to identify it.—A. That is a Panoptik; semifinished.

Mr. McCracken. I move its admission, your Honor.

Mr. TOULMIN. We object, if the Court pleases. This is not a Univis blank and has nothing to do with these issues. It is a Panoptik; another manufacturer.

The COURT. Objection sustained.

Mr. McCracken. Is that without prejudice, your Honor, without going into the comparison of the finishing stages of the various blanks. I believe it is very material to the issue here.

The COURT. I sustain the objection, and I don't want to get into that discussion now.

Q. Is that the type of Panoptik blank you buy from Bausch & Lomb?—A. Yes, sir.

Mr. TOULMIN. We object.

The COURT. Objection sustained.

(Lens blank marked "Government's Exhibit 50" for identification.)

335 Q. I show you Government's Exhibit 50 for identification, and ask you to identify it.—A. That is a Tillyer Ful-Vue bifocal.

Q. Are the Tillyer lenses and the Panoptik lenses known in the trade as flat top bifocals?

Mr. TOULMIN. I object.

The COURT. Objection sustained.

Mr. McCracken. I move the admission of these particular exhibits, your Honor, the last two offered. If they are to be ad-

mitted they will show the type of flat top bifocal which the Government claims is processed and finished in exactly the same manner for all substantial purposes as the particular lens in issue here and the Government would like to bring out considerable testimony as to that identity in processing.

The COURT. I will sustain the objection.

336 Q. Mr. Potter, in semi-finishing the rough Univis blank in your shop, does that blank upon having been semifinished by you resemble in every respect, except for the patented inserts—

The COURT. Except for what?

Mr. McCracken. Except for the patented inserts, your Honor.

Q. (Continuing.) The flat top "D" segment, does it resemble also the semi-finished blanks purchased by you from American Optical Company and from Bausch & Lomb?

Mr. Toulmin. We object.

The COURT. Sustained.

Mr. McCracken. The Government's offer was to show, your Honor, that they are subjected to exactly the same manufacturing and exactly the same steps and processes.

The COURT. I understand. The offer will be included in the record.

Q. Mr. Potter, in semi-finishing a Univis lens, would you in any way process it differently than you would semifinish a blank of the Ful-Vue or Panoptik type?

Mr. Toulmin. We object.

The COURT. Sustained.

Q. Mr. Potter, has the Univis Company ever required that your grinders process Univis differently from other flat top bifocal blanks?

337 Mr. Toulmin. We object.

The COURT. Sustained.

Q. Mr. Potter, do you slow-polish your Univis blanks?

The COURT. There is no objection to your asking the witness what instructions, if any, he receives from the Univis Lens Company.

Mr. McCracken. Thank you, your Honor.

Q. Mr. Potter, what instructions have you received—

The COURT. If any.

Q. What instructions, if any, Mr. Potter, have you received from the Univis Lens Company as to the manner in which you shall process their Univis blanks?—A. Well, they suggest that we polish them slower to give them a higher polish and a better finish.

Q. At what stage of the manufacturing does that slow polishing occur?—A. Well, that will occur at two stages: First on the seg-



ment side, and then on the other side, the cylindrical side, the opposite side.

Q. Do you slow-polish Tillyer lenses?

Mr. TOULMIN. We object.

The COURT. Sustained.

Q. Mr. Potter, what is the optical quality of those lenses which you slow-polish in your shop?

Mr. TOULMIN. We object unless it is confined to Univis.

338 Mr. McCracken. I do not think it should be so confined, your Honor. I await your ruling on it.

The COURT. I am afraid that I shall have to sustain the objection.

Mr. McCracken. The Government would like to make this offer of proof, your Honor: If testimony were accepted on this slow polishing stage, the testimony would show that all lenses having cylindrical correction, including Panoptik, Widesite, Univis, Ultex, Kryptok, all bifocal and colored lenses are subject to a slow grinding process—a slow polishing process.

The COURT. The statement of the offer will be included in the record.

Q. Mr. Potter, do you have any special workmen in your plant who work only on Univis lenses?—A. No.

Q. Has the Univis Company ever required that you have any specially trained workmen for working on Univis lenses?—A. No.

Q. Do you use any special tool in finishing Univis lenses?—A. Our tools have to be much more exact.

Q. Will you expand that statement, please.—A. Well, normally a tool wears off in grinding.

Q. Yes?—A. And if it wears off in an ordinary type of lens, it is easy to regrind it; but once it wears off in a Univis lens 339 it is rather difficult, because when you regrind you on the segment side, because of the shape of the segment, it changes the shape, and the lens practically—well, you can't use it. It can't be salvaged. So we have to be rather more careful in that respect.

Q. Do you inspect all your tools used in grinding all lenses?—A. Oh, yes.

Q. And correct them for any deviation found?—A. We do.

Q. Do you use any special finishing materials in the finishing of Univis lenses?—A. Generally speaking, no.

Q. Do you use any whatsoever?—A. In the polishing we use a harder polishing to give it a more brilliant finish.

Q. Do you use that only on Univis?—A. We use it on the other higher type lenses.

Q. What do you mean by higher type lenses?

Mr. TOULMIN. We object, your Honor. I do not want to continue to object, but—

The COURT. I sustain the objection.

Q. Has Univis ever required you to use any special materials in the finishing of Univis lenses?—A. No, they never have.

Q. Are the prescriptions of the Univis lenses written in any special manner, or according to any special learning?

Mr. TOULMIN. If the Court please, I could have objected 340 to some of these other questions, but I will object now, because it seems to me it is going to be an indefinite series. It seems to me it is unimportant in this lawsuit, from our point of view, if I may submit that, whether special instructions were given or not given. The only issue is whether—

The COURT. We have covered that. Now, obviously the prescription is not written by the Univis Lens Company. It is written by some optician or other person who prescribes for a customer. I sustain the objection.

Q. Does the Univis Lens Company ever inspect the finished Univis lens blank as ground in your shop?—A. No.

Q. Do they ever relay to you complaints concerning the condition of Univis lenses ground in your shop?—A. Oh, yes.

Q. Will you expand on that, please?—A. Well, if one of our customers would complain about the condition of the lens, they might complain to one of the Univis people, and he would relay the information to us very quickly.

Q. How often does that happen?—A. A very rare thing.

Q. Did the Univis send any special trainers to your shop in order to train your men in the processing and finishing of Univis lenses?—A. Well, in one instance they did.

Q. What time was that?—A. When they brought out the slab-off grinding, they sent a special instructor.

Q. Is that the only instance?—A. That is the only 341 instance I can recall.

Q. That is your best recollection?—A. Yes.

Q. What percentage of your grinding in Univis does the slab-off bifocal represent?—A. It is a very small percentage.

Q. Have you a specific figure in mind? Is it less than 5 percent?—A. Yes; I should say less than 5 per cent.

Q. Is it less than 2 percent?—A. I should say it is less than 2 percent.

Q. How much less?—A. I should say about 1 percent of our grinding is slab-off grinding.

Q. In the rough Univis blank purchased by you from Univis, the optic center of the reading segment fixed?—A. Yes; it is.

Q. Will you define that optic center in general terms?—A. Well, the optic center is the reading center of the segment, which is about 4 millimeters below the top. That is fixed at that point.

Q. Would it be defined as the geometric center of the truncated circle which is the reading segment?—A. I would say that was the correct definition.

Q. Is the optic center moved by the semifinishing process?—A. No, that remains fixed.

Q. Is the optic center moved by the finishing process?—A. No; that remains fixed.

342 Q. In what type of Univis lens, as finished by you, is the optic center moved?—A. Well, the slab-off would move the entire center of the lens.

Q. Does that also move the optic center?—A. Of the reading portion of that one lens.

Q. Is the optic center moved in any other type of finishing?—A. No.

Q. Mr. Potter, do you sell Univis blanks to other finishing licensees?—A. We do.

Q. How do you fix the price for such sales?—A. Well, we fix it by the price list of the Univis Company.

Q. Do you receive a periodic list of new licensees from the Univis Company?—A. We do.

Q. Will you describe it briefly, please.—A. It is just a sheet of paper with the names of the licensees as they qualify in the various States.

Q. How frequently is that sent to you?—A. I think it comes at irregular intervals, but it comes very frequently.

Q. More frequently than once a month?—A. It seems to me it came much more frequently.

Q. What use do you make of it?—A. Well, if an account went in to us for Univis lenses, we would perhaps look him up and see if he is a qualified user of them.

Q. Do you make your own list from the entries of this  
343 list sent out to you?—A. We would not sell anybody who was not on that list, if that is what you mean.

Q. Has Univis ever represented to you that their patents cover your finishing of their lenses.

Mr. TOULMIN. If the Court pleases, I do not think the representation of this—

The COURT. How is that figured?

Mr. McCRACKEN. The objection would go to weight, as I see it, your Honor.

The COURT. It certainly goes right to the relevancy.

Mr. McCRACKEN. Very well, your Honor.

I would like to have marked the notification bulletin No. R232, dated January 31, 1940.

(Marked "Government's Exhibit 51" for identification.)

Q. I show you Government's Exhibit 51 for identification and ask you to identify it.—A. That is the type of notification we receive.

Q. And that is a typical example?—A. That is a typical example.

Mr. McCracken. I move its admission, your Honor.

Mr. Toulmin. No objection.

(Government's Exhibit 51 for identification received in evidence.)

Q. Mr. Potter, I now direct your attention to the time  
344 at which you received your license from Univis. Did you communicate with anyone in the Univis Company or Corporation in reference to obtaining that license, or were you visited by them before having gotten in touch with them?

Mr. Toulmin. We object, if the Court please. The contract is sufficient.

The Court. Sustained.

Q. With whom did you deal in taking out your Univis license?

Mr. Toulmin. Same objection.

The Court. Sustained.

Q. Were you told at that time that all licenses would receive identical licenses?

Mr. Toulmin. We object.

The Court. Sustained.

Q. Were you told at that time that not all applicants for license would be licensed?

Mr. Toulmin. We object.

The Court. Sustained.

Q. Mr. Potter, do you recommend retailer license applicants to the Univis Company?

Mr. Toulmin. We object.

The Court. Sustained.

345 Q. Do you recommend them to the Univis Corporation?

Mr. Toulmin. We object.

The Court. Sustained.

Mr. McCracken. As an offer of proof with respect to the last sustained objections, your Honor, I would like to say that the Government intended to show thereby the nature of the arbitrary rules and regulations and the extent to which the licensees fit into that picture as alleged in the complaint.

The Court. The offer will be noted in the record.

Mr. McCracken. No further questions, your Honor.

Cross-examination by Mr. Toulmin:

Q. Mr. Potter, will you please look at Exhibits Nos. 46, 47, and 48, and tell me whether or not those pieces of glass are blanks or finished lenses?—A. None of these are finished.

346 Q. They are are all blanks, aren't they?—A. They are all blanks.

Q. Could anyone use those blanks before you, without any further work being done upon them?—A. Oh, no.

The COURT. "Before you"? I don't understand.

Mr. TOULMIN. That is, the blank before him.

The COURT. Oh, yes.

Q. These Univis blanks that are before you now, could anyone use them in that condition without doing further work upon them if they wished to use them as eyeglass lenses?—A. No; they could not.

Q. They have no utility as a finished lens?—A. None at all.

Q. Tell the Court, if you please, generally what steps you take on Univis blanks to produce a lens which you return to the person who has ordered the lens from you; what manufacturing steps.—A. Well, that is a rather long and involved procedure. When you first take it it goes to the foreman—

The COURT. Suppose you take this rough lens, Exhibit 46, first.

A. (Continuing.) Exhibit 46 is merely the blank. It is not finished on either side. First, before anything is done, the order that come from our customer goes to the foreman who decides

347 what type of thickness of blank and what curvature would be desirable for this particular order. He then hands it to one of the men, it is just rough then, who has to grind it; first, rough grind it, and then fine grind it, and fine grind it again, and fine grind it a third time.

The COURT. That is on one side; the convex side?

The WITNESS. On the convex side.

A. (Continuing.) Then it is polished. Then it has to be taken off—before that it has been cemented to an iron block. It is then taken off the iron block and cleaned, and then it goes back to the foreman again who chips off all the surplus glass, and when he gets it nearly the correct size, and if it happens to be ground for astigmatic prism he has to lay off the axis, the direction in which the lens is to be ground. Then it goes back to the blocking bench again and it is blocked on an iron block and then permitted to cool for a certain length of time. It then goes to the rougher who takes off all the surplus thickness of the blank.

The COURT. You are now pointing to the concave side?

The WITNESS. The concave side now.

A. (Continuing.) He takes off all the surplus thickness, and then the rougher hands it to what we call a semi-finisher who, by various stages, perhaps a half a dozen, and different grits  
348 of emery, he grinds it to the correct thickness, and then it goes to the polisher who then polishes the lens and then we get it finished in the uncut form.



We have to be extremely careful in all these processes to keep the segment exactly the size that is ordered. We find our customers very finicky, and a half a millimeter difference if too small, would cause a rejection of a lens especially on the side of the segment if it is half a millimeter too small.

Q. Do your operations affect the size of the segment?—A. Yes; they do. The more we grind on the convex side the smaller it becomes and if a little bit of grit gets in there the smaller the lens becomes and we have to substitute another. There is a great amount of time put on that in our business. We normally cannot rush it. It takes us at least two hours to make a pair of lenses. Normally it takes longer, but by sticking to it it takes two hours to supply a finished pair of lenses.

Q. Have you completed your answer?—A. Then it goes to the grinder who cuts to size and marks the axis off. During this time there are numerous inspections that take up time.

Q. Let us go back to the blank stage before you do any work, Mr. Potter, and tell me from what source you get the instructions that pass on and turn over to your factory, your plant, to carry out the wishes of the prescribing physician or whoever it is who has written the prescription.—A. The retailer sends us the order with the full descriptions and the measurements that he requires and we have to make our lens to correspond with both the formula and the measurements.

Q. Is that in addition to the prescription?—A. In addition to the prescription, yes.

Q. So you have two things: You have the prescription and then you have these instructions from the retailer, is that correct?—A. Yes, sir.

Q. Do you have as a customer, Dr. H. L. Purdy, of 560 Madison Avenue?—A. Mr. H. L. Purdy; yes, we have.

Q. What type of business is he in?—A. He is a dispenser. He merely fills prescriptions of the oculist.

Mr. McCracken. I object, your Honor, for this is not within the scope of the direct.

The COURT. I don't know whether it is or not.

Mr. McCracken. There is nothing to indicate at this stage. It should be made clear as to the materiality or relevancy, I think.

The COURT. In preliminary form that is true, but you have to give cross-examining counsel an opportunity to develop what he has in mind.

Mr. Toulmin. I ask that there be marked for identification the half dozen greenish envelopes as Defendants' Exhibit A for identification.

350 (Marked "Defendants' Exhibit A" for identification.)

Q. Will you please look at those several envelopes and the endorsements on the outside of them and state if you know what they are?—A. Oh, yes. Well, the first one, Exhibit A, calls for two pair of D Univis. Do you want all the rest of it?

Q. Where did these envelopes come from, if you know?—A. H. L. Purdy.

Q. And has your company ever received these envelopes; that is, do they come from your files?—A. Yes; all the time; every day.

Q. Those are typical instructions that you receive?—A. Typical instructions; yes.

Q. When you are to fill a Univis order for a Univis pair of glasses, you receive from the purchaser who is communicating with you instructions which are contained on typical envelopes such as those in front of you now?—A. Correct.

Q. Do those envelopes contain any of the instructions in addition to the prescription?—A. Oh, yes. This first one here calls for two pairs. Now, they are different size. The segments happen to be the same size, but one of them is ordered to be decentered, one a half a millimeter in towards the eye and the other centered only one millimeter toward the eye.

Q. Is that what you call the designing instructions 351 from the—A. Yes; and it is very important.

Q. Taking two prescriptions exactly alike but which are to be used for different persons, can you simply follow the prescription without any further information and have a satisfactory fitting of those eyeglasses?—A. No; we have to have complete instructions.

Q. And those instructions first from the licensee or person who is ordering glasses?—A. They do.

Q. Is that correct?—A. That is correct.

Mr. TOULMIN. We offer these in evidence as our Exhibit A.

Mr. McCracken. Objection, if your Honor please.

The COURT. Objection overruled.

(Defendants' Exhibit A for identification received in evidence.)

Mr. TOULMIN. Now, if the Court please, I have something here that might be tedious but may be helpful as illustrative of what happens in his plant, and I am going to take the liberty of having him identify them.

The COURT. Yes.

Mr. TOULMIN. I would like to have these photographs marked as a single exhibit as Defendants' Exhibit for identification B.

(Marked "Defendants' Exhibit B" for identification.)

Q. In your direct examination, Mr. Potter, you referred

352 to your workshop or plant with some 50 persons working in it. Will you kindly look at these photographs and state whether they are pictures of the interior of your plant?—A. Yes.

Q. Will you explain to the Court very briefly with reference to the process on the Univis blank into lens form, what those particular machines indicated in the photographs have to do with the process as described by you a few minutes ago? Hold them up so that his Honor can see them.—A. That is the laying off and the cutting of the surface glass to the approximate size so there will be prism on it [indicating photograph]. This here [indicating machine] grinds them and from these grinders there these are the roughers and these the grinders who put in the finishing form, and this is the polisher who does the polishing [indicating].

Mr. McCracken. I would like it clear that this refers to the finishing of all lenses.

The Court. Yes, I understand that is so.

A. (Continuing.) Here is another one of the polishing benches also [indicating]. This is the marker who cuts them for the final shape and these are the edge grinders who put a edge on them and these are our methods of inspection to see that they are correct after they are finished.

The Court. They are put in a microscope?

353 The Witness. Yes; they are in this type of microscope and this [indicating] is the machine for truing our tools and seeing they are kept in form all the time.

Mr. McCracken. No objection to the photographs, your Honor,

Mr. Toulmin. We offer these photographs in evidence as our Exhibit B.

(Defendant's Exhibit B for identification received in evidence.)

Q. Mr. Potter, in connection with the Univis blanks and the grinding of them into the finished lenses, do you practice the type of grinding which is known as compensated grinding?—A. Yes.

Q. That is correction of the prismatic imbalance?—A. We do.

Q. Does that form any material portion of your business, do you recall offhands?—A. Not any material portion, but a very necessary portion.

Q. In connection with that necessary portion of your business, I wish you would look at the Government's Exhibit 5 for identification, and tell us whether or not you recognize the pieces of glass on that exhibit?—A. Yes. It is a Univis D in the various stages of grinding.

354 Q. Does that board represent the various phases that you have just described as to Univis lens blanks being ground into lenses?—A. It does. This is the rough form [indicating], and that is the semifinished one [indicating] and this is the form with the inside taken off; the concave side ground.

Mr. TOULMIN. You are reading from the top of the board from left to right?

The COURT. Yes.

A. (Continuing.) And this is one of the cylindered astigmatic, correction ground on the inside and then this is laid off for the one with the cylinder axis laid off, and the glass is cut with a diamond to give it a shape and then it is cut down to shape there and then beveled here for a frame and drilled here for a mounting.

The COURT. And this is the finished lens [indicating]?

The WITNESS. This is the finished lens and these are ground for the imbalance, or as we call slabbing off. That surface glass is cut off so the two lense will balance. Where there is a great difference in the strength of the two lenses we cut off that line there so it sort of bevels. You can see the bevel [indicating].

Q. While you have that in front of you will you point out those lenses which show the prismatic grinding?—A. These here [indicating].

Mr. TOULMIN. At this time, your Honor, we would  
355 like to offer this board in evidence as our Exhibit C.

(Government's Exhibit 5 for identification received in evidence as Defendants' Exhibit C.)

Q. Now, Mr. Potter, the optical centers are changed in position?—A. Yes; they are.

Q. On compensated grinding?—A. Yes; they are.

Q. Isn't it true also due to grinding you sometimes change the optical center of Univis blanks—in other forms of grinding?—A. I don't quite understand.

Q. Let me phrase it another way: Isn't it a fact, Mr. Potter, that you have to be extremely careful in grinding Univis blanks into lenses not to disturb the optical center?—A. Very important.

Q. And if you are not careful you may disturb that center, isn't that correct?—A. Yes.

Q. And isn't it a fact that in connection with Univis lenses with their flat tops, precisely precisely flat tops, that that introduces a special problem into the grinding of blanks into lenses of the Univis type? That is correct, isn't it?—A. That is correct.

The COURT. Suppose you develop that point.

Mr. TOULMIN. I am going to develop that further.

Q. Suppose you tell the Court now just what are the problems of a practical nature that are raised by reason of having this  
356 precisely flat top in the Univis flat top blank when you grind it into a lens?—A. Well, the first and principal difficulty in that is that in grinding your cylinder for your astigmatic correction that is always apt to, that is the operator in working with it is apt to shift that, well, I might say a 64th of an inch in grinding and when we go to cutting that up the main essential



part of a lens is, of course, to see that the axis is correct, and so if you get your axis correct, if that has not been ground precisely in relation to the flat top, your top will slant when you cut it off. For instance, if it is supposed to be 180 and it comes out 178, we must have it 180, and if we shift that down so the top of the segment will not be straight that makes an unsightly looking job and it gets into the patient's line of vision and the result is we have to be extremely careful to see that our tools are in absolute condition and the machines in perfect shape so those things will not happen.

Q. And that is the problem?—A. And that is a very difficult problem and we have to contend with that.

Q. You mean in connection with Univis?—A. In connection with Univis, yes.

Q. In connection with the grinding of Univis do you receive any instructions as to the selective base curves that are to be employed? To refresh your memory, I hand you a chart.

Mr. TOULMIN. First, I would like to have this  
357 marked for identification.

(Marked "Defendants' Exhibit D" for identification.)

Q. (Continuing.) To refresh your recollection on the matter I hand you as the chart, Defendants' Exhibit D for identification.—A. This is the chart we have; yes.

Q. Are you familiar with that chart?—A. Only from having seen it in the shop. The men have it posted up on their chart boards.

Q. And that chart is used to guide them in connection with the Univis work, is that correct?—A. Yes.

Mr. TOULMIN. I would like to offer this in evidence as our Exhibit D.

Mr. McCracken. No objection.

(Defendant's Exhibit D for identification received in evidence.)

Q. Now, Mr. Potter, in connection with Univis blanks which you are manufacturing in your place, do you receive from time to time technical instructions from the Univis people as to how to make those blanks?—A. Yes; quite frequently.

Q. I am going to show you a group of documents which I will ask to be marked for identification—

(Marked "Defendant's Exhibit E" for identification.)

Q. (Continuing.) And I will ask you to state whether  
358 those are typical sets of instructions and bulletins on technical instructions?—A. Yes, sir.

Q. Received from the Univis Company?—A. Constantly.

Mr. TOULMIN. We offer that group, if the Court please, in evidence as our exhibits.

Mr. McCracken. No objection.



(Defendants' Exhibit E for identification received in evidence.)  
Mr. TOULMIN. That is all.

Redirect examination by Mr. McCracken:

Q. Mr. Potter, you testified that the blank, the rough lens blank, cannot be used without further processing?—A. Yes, sir.

Q. Is that true only of Univis?

Mr. TOULMIN. We object.

The COURT. Objection sustained.

Mr. McCracken. Our offer would show, your Honor, that no lens blank can be used without further processing, whether the Univis or any other.

The COURT. The statement of the offer will be incorporated in the record.

Mr. McCracken. Thank you.

Q. Mr. Potter, you stated that the grinding affected the size of the segments in Univis lenses. Does grinding wear away the segments of all lenses?

Mr. TOULMIN. We object.

359 The COURT. Objection sustained.

Mr. McCracken. Again our offer, your Honor, would show that any segment is necessarily affected in size by the grinding process.

The COURT. Yes.

Q. Mr. Potter, does it take longer to grind Univis than to grind any other lens?—A. It takes longer to grind the Univis.

Q. How much longer?—A. Why, in the normal run of trade, I should say a half an hour longer at least.

Q. Does it take a half an hour longer than it takes to grind the Panoptik?

Mr. TOULMIN. We object, your Honor.

The COURT. Objection sustained. You had him answer your previous question.

Mr. McCracken. I was trying to tie it down as to other particular lenses.

The COURT. I don't think it is important that you should show that.

Mr. McCracken. Our offer is to prove that as to all of the types, the Panoptik, the Ful-Vue, the Widesite and the Kryptok have the same problems as to which he has testified to a substantial degree.

The COURT. The offer will be incorporated in the record.

360 Q. Mr. Potter, you have testified that the prescription coming in from the doctor who wrote the prescription contains instructions other than the mere technical measurements called for. Is that true of prescriptions as to other lenses?

Mr. TOULMIN. We object.

The COURT. Objection sustained.

Mr. McCracken. Our offer would show, your Honor, that the prescription must necessarily always be written as a complete job and that the fact that the Univis lens is involved does not make a sui generis example.

The COURT. It is perfectly obvious that your line of examination has opened up what has been developed in cross-examination but not to the degree you indicate in your present question.

Q. Mr. Potter, does your testimony as to what was termed compensated grinding in your cross-examination refer to the grinding of the slabbed-off bifocal?—A. Of course, it does include the slab-off bifocal.

Q. Does it include any other?—A. They supply a compensated blank also; the segment compensated for prism.

Q. What percentage of the Univis blank finished by you does that particular blank represent?—A. I would say the total of the slabbing off and the compensated blank would be about possibly five per cent.

361 Q. Certainly no more?—A. No; I do not think so.

Q. And probably less?—A. Most likely.

Q. Mr. Potter, you were shown Defendant's Exhibit C, which was a board containing lenses in various stages of finish. Directing your attention to the stages represented in that board, do all lenses go through those stages?

Mr. TOULMIN. We object.

The COURT. Objection sustained.

Mr. McCracken. Our offer would show, as is obvious, of course, your Honor, that all lenses do go through such stages.

The COURT. Yes.

Q. Mr. Potter, is the Univis lens the only lens in which you must take care not to disturb the optical center of the segment?

The COURT. Objection sustained.

Mr. McCracken. Again the obvious offer is, it is not the only lens.

Q. Mr. Potter, you testified you had what you referred to as axis trouble, I believe?—A. Yes.

Q. With some Univis lens blanks after they had been ground?—A. Yes.

Q. Did you have that only with Univis?

Mr. TOULMIN. We object.

The COURT. Objection sustained.

362 Mr. McCracken. If I may again belabor the record with our offer, your Honor, we would show that without any question it is true of other lenses, perhaps in varying degrees, but not substantially varying.

Q. Do you have a special inspection, Mr. Potter, in your shop of the tools used in grinding Univis?—A. No special inspection.

Q. Mr. Potter, do you receive charts containing grinding instructions and other data similar to that shown in Defendants' Exhibit D from other manufacturers of lenses?

Mr. TOULMIN. We object.

The COURT. Objection sustained.

Mr. McCracken. On information and belief, your Honor, the offer would show that other manufacturers distribute the same sort of literature which is compiled according to the same optical and mathematical law.

Q. Mr. Potter, you stated that your shop had received technical instructions from Univis. I believe you indicated it happened more than once. Will you briefly state those instances for the Court?—A. The only time that I know of that it happened was with the slab-off bifocals. I have no recollection of it happening other times.

363 Q. Mr. Potter, in your grinding of the Univis bifocal, is it possible to change the shape of the reading segment?—

A. Oh, yes.

Q. By "changed shape," I mean, can you change the patented "D" shape, the so-called patented "D" shape of that segment?

Mr. TOULMIN. We object.

The COURT. You mean as a physical thing is it possible to do it?

Mr. McCracken. Yes, your Honor. I was not sure that the cross was clear on that point. I merely wanted to bring out that the physical outline of the segment itself cannot be changed by the grinding.

The COURT. I overrule the objection.

Mr. TOULMIN. My objection went to the use of the patented shape, trying to interpret what the patent was.

Mr. McCracken. I will gladly rephrase the question, your Honor.

The COURT. Very good.

Q. In the grinding of the Univis lens, is the outline of the "D" segment in any way changed?—A. We can't change the horizontal line of the top, but we can change the shape of the bottom part of the segment. We can make it somewhat egg-shaped; if

364 the operator in grinding presses too much on one side than the other, he distorts the shape somewhat.

Q. Is it a material distortion to the eye?—A. Well, it is sufficient to have them reject it occasionally.

Q. Are you able to answer the question as to whether or not it is a material distortion to the eye?

The COURT. That depends on the extent to which the segment has been deformed by any operation.

Mr. McCracken. Yes, your Honor; and I would like to say that the extent to which it is deformed is not an appreciable extent.

The COURT. Well, the witness can say.

A. Well, it is sufficiently appreciable for our customers to reject the lens.

Q By your customers, you mean the technically trained—  
A. The stores that accept them.

Q. Is it possible to change the segment to such an extent that you can make a round top segment out of a Univis blank?—A. No.

Q. And it is impossible, of course, to grind and change the round top so you can make a flat top out of it?—A. It is impossible.

Q. I would like to again direct your attention to your testimony on cross examination with respect to certain instructions  
365 that accompanied the prescription. I would like to have you develop the nature of these instructions.—A. Well, the instructions have first of all to do with the size of the lens. Then they have to do with the height of the segment, how high the segment is to appear in the lens, and then the amount of decentration in the segment, whether it is to be set in or out. They vary in almost every instance. They are never alike. On one of those orders here, in one case he had the segment decentered out for one eye and in for the other, which means that we have to be doubly careful in a case of that nature.

Q. All prescriptions do that where necessary?

Mr. TOULMIN. We object.

The COURT. Sustained.

Mr. McCracken. Our offer would show, as I indicated before, your Honor, that all prescriptions do.

The COURT. Yes.

Q. Mr. Potter, when the lens has been finished in your shop and assembled in the frame, is it then completely manufactured?

Mr. TOULMIN. We object unless they are referring to Univis.

Mr. McCracken. I will confine the question first to Univis, your Honor:

Q. When the Univis lens is fitted into the frame after having been finished, is there any further manufacturing  
366 to be done on it?—A. None.

Q. Mr. Potter, several photographs of your machines and of your equipment have been offered in evidence. Is any of the machinery there shown used only for Univis?

Mr. TOULMIN. We object.

The COURT. I will sustain the objection.

Mr. McCracken. Our offer would show that—

The COURT. You have already established that, Mr. McCracken. You asked the witness while the photographs were being described by him that very question. You got a satisfactory answer.

Mr. McCracken. I am delighted it is established, your Honor. Thank you.

The COURT. There is a point at which cross-examination ought not to go beyond.

Mr. McCracken. Yes, your Honor, I shall try not to exceed it.

Q. Mr. Potter, do your finishers exercise care lest they change the optical center of all lenses?

Mr. Toulmin. We object.

The COURT. Sustained.

Mr. McCracken. Our offer would show, of course, that they do, your Honor.

The COURT. You can try all sorts of ways of dodging  
367 the issue, but I will restate what I said before. As I see it Mr. McCracken, it is the validity of these licenses.

Mr. McCracken. I had no intention of dodging the issues.

The COURT. You have been trying to bring in a lot of material which would be relevant only if licenses were not lawful licenses.

Mr. McCracken. I would just like to explain, your Honor, that I am only trying to bring in material which I think is relevant to the Government's theory of the case.

No further questions, your Honor.

The COURT. I do not want to foreclose you.

Mr. McCracken. Oh, no, sir; no prejudice whatsoever.

Mr. Toulmin. That is all.

Mr. Glickfeld. Your Honor, we have several wholesalers in the courtroom who, I think, would testify along the same lines as this witness, and I think if we can get an agreement by counsel that they would so testify, we could obviate the necessity for their testimony.

Mr. Toulmin. I have no objection, your Honor, to stipulating that other wholesalers would testify the same thing as to  
368 Univis lenses. Our position here is simply that manufacturing is done; the precise detailed nature is not so vital; and I see no point to continuing with additional witnesses, if the Court pleases.

The COURT. Is that satisfactory?

Mr. Glickfeld. With one exception, that we do have a wholesaler from Washington, D. C. who, if he testified, would show that he purchased the lenses and resold them in the District of Columbia; and if the stipulation will also include that, I think we can dispense with the necessity for examining him.



The COURT. I suppose it will.

Mr. TOULMIN. May I inquire of my client?

The COURT. Yes.

Mr. TOULMIN. Will your Honor indulge me a minute to confer with Mr. Glickfeld as to exactly what he wants me to stipulate?

The COURT. Yes.

(Mr. Toulmin conferred with Mr. Glickfeld.)

*Stipulation re certain facts*

Mr. GLICKFELD. If your Honor please, counsel for the defendants and counsel for the Government have, I think, agreed upon this stipulation: That the defendants, the Lens Company and the Corporation, have executed wholesaler licenses and retailer licenses for operation in the District of Columbia in the identical fashion that such licenses have been executed and carried out throughout the 48 States; and in addition thereto that there are no fair trade agreements executed between such defendants and such licensees.

The COURT. In the District of Columbia?

Mr. GLICKFELD. In the District of Columbia.

Mr. TOULMIN. That is correct, your Honor, with the exception of one thing, that I want to be quite clear about, that we take the position as a matter of law that in the District of Columbia, being Federal territory, that the Miller-Tydings Act, which is an amendment to the Anti-Trust Law, applies, because there could possibly be no State act so far as the other conditions of the Act are concerned.

The COURT. Yes; that is a matter of law.

Mr. TOULMIN. A matter of law.

The COURT. The stipulation is as to the facts.

Mr. TOULMIN. As to the facts, that is perfectly satisfactory.

Mr. GLICKFELD. Then I think we can excuse those other wholesalers who have been subpoenaed to testify.

BERTRAM V. GAUL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GLICKFELD:

Q. Mr. Gaul, what is your present occupation?—A. I am a part owner of a retail optical store.

370 Q. And are you also an optician?—A. I am.

Q. And what is the name of that store?—A. Courmettes & Gaul.

Q. How long have you been an optician, sir?—A. Twenty years.

Q. Is Courmettes & Gaul a company?—A. It is a corporation.

Q. Is your corporation a Univis licensee?—A. It is.

Q. Do you know how long it has been a Univis licensee approximately?—A. I think since the inception of the Univis Lens.

Q. After you receive a job from your wholesaler, will you please explain what you do in the resale of the job which you obtain from the wholesaler?

Mr. TOULMIN. We object unless it is limited to Univis.

The COURT. I suppose it is.

Mr. GLICKFELD. The purpose of the question is to limit it to Univis.

A. Are you speaking of the prescription we send to be filled and then brought back to us?

Q. Yes.—A. We simply inspect it and see that it is made up according to our instructions; and when the patient comes we fit those glasses to the patient.

The COURT. What do you mean by "resale"?

371 Mr. GLICKFELD. All I meant by that was that Courmettes & Gaul make a sale—that is, they get an order from a customer; they send that order to a wholesaler; the wholesaler sells to Courmettes & Gaul the finished product according to the specifications that are sent to them by Courmettes & Gaul who thereupon resell the same product.

The COURT. Oh, no; not at all. It is a sale by Mr. Gaul. It is not a resale by him. It is a sale of something that he has purchased, if that is what you mean. I do not care how you phrase it, so long as I understand the question.

Mr. GLICKFELD. Then I will amend my question, your Honor: The word "resale" to be stricken; the word "sale" to be substituted.

The COURT. All right.

Q. Now, with that understanding, Mr. Gaul, will you kindly explain what you mean by fitting the patient?—A. Well, we adapt the frame or the mounting to the particular requirements of the patient to be sure that they set comfortably, and are properly fitted and properly measured, and just as they should be.

Q. Will you be kind enough to spell out in as great detail as you can the fitting of the glasses upon the face of the patient?

372 Mr. TOULMIN. Of the Univis?

Mr. GLICKFELD. Of the Univis.

Q. (Continuing.) Just tell us as simply as you can exactly what you do.—A. Well, we make certain that the guards or the nose piece is comfortably resting on the nose; that the ear pieces, if there are ear pieces, are also comfortably fitted, and that the whole thing sets up as it should for a pair of usable glasses.

Q. Do you make any adjustments on the lenses themselves?

Mr. TOULMIN. The Univis?

Mr. GLICKFELD. The Univis.

Q. Do you make any adjustments on the Univis lenses themselves?—A. I can't touch the lens.

Q. Your adjustments go only to the frame or the mounting?—A. That is right.

Q. Did you participate in the securing of the license from the Univis Corporation?

Mr. TOULMIN. We object, your Honor.

The COURT. Sustained.

Mr. GLICKFELD. I think our line of questioning, your Honor, if it may so please you, is to bring the business of these defendants within the scope and within the doctrine of the Supreme Court's decision in the Interstate Circuit case where, I am sure your

373 Honor knows, it was held that in an antitrust action, that where the licensees each executed separate and distinct agreements between themselves and the licensor, and rely upon similar agreements being executed by similar licensees with the same licensor, and the effect of such was to bring about an agreement between the licensees themselves, which could not be permitted were it not for these agreements with the licensor, that such agreements constitute a conspiracy in violation of the Anti-Trust Laws; and we are relying upon that same doctrine and that same theory in this case, in some part.

The COURT. What have you to say about that, Mr. Toulmin?

Mr. TOULMIN. Why, if the Court please, if the license contracts are valid, properly issued under these patents, then we would have the same condition that we have with any patent license agreement where there is more than one licensee. Now, their question is not directed in this instance to showing a conspiracy between a whole host of licensees or a group of jobbers and retailers. They are merely directed to whether or not this gentleman here has signed a license, a fact which we, of course, admit. But there is nothing more than that that they have been able to bring out or could bring out by that question.

374 The COURT. They have not been able to bring it out because we have been excluding a good deal. But if the Government expects to prove that the licensees all undertook to do something themselves, among themselves, and by virtue of their rights, under the agreements from the central source, it goes a little beyond what heretofore has been stated.

Mr. TOULMIN. Yes, your Honor; and it goes beyond what their bill of complaint avers. I find nothing in the bill of complaint averring that there has been any conspiracy between the several licensees. The conspiracy averments go to the conspiracy between the defendants.

The COURT. Every time that matter is put up to Government counsel they rely on certain general clauses in the complaint. As I read the complaint, it does not cover any such wholesale conspiracy as to the licensees. However, so that there will be no technical disadvantage suffered by you, I will permit the question. I think, strictly speaking, it is not admissible under the pleadings.

Mr. GLICKFELD. Thank you, your Honor.

Will you read the question, please?

Q. (Read.) A. You will have to qualify the word "participate." I do not know what you mean by that.

Q. Did you have anything to do with your company's obtaining the license from the Univis Corporation?

Mr. TOULMIN. Same objection, your Honor.

375 The COURT. I will allow him to answer.

A. Well, simply nothing more than we desired to sell those lenses, and we made the request of the Univis Company to permit us to sell them or to arrange for us to sell them, and they did.

Q. Lest you misunderstand me, Mr. Gaul, I am merely trying to ascertain whether you acted on behalf of your company in obtaining a license agreement from the Univis Corporation.—A. Well, we did not do anything about it. We just received the license from them.

Q. Did you speak with anyone representing the Univis Corporation concerning the obtaining of a license agreement?—A. I really could not recall.

Q. Do you recall whether your company executed this agreement acting in reliance upon other identical agreements being executed by other retailers?

The COURT. I will sustain the objection, in view of the answers that this witness has given to your previous questions.

Q. Do you know, Mr. Gaul, who on behalf of your company participated in the obtaining of the license agreement from the Univis Corporation?—A. I do not; no.

Q. In any event, you have no recollection?—A. No, I have none.

Mr. GLICKFELD. There are no further questions.

376 Mr. TOULMIN. No cross examination.

The COURT. That is all.

Mr. McCRACKEN. Your Honor, I must apologize for what has been characterized as a substitution.

The COURT. You would like to put the same question to Mr. Potter that I permitted finally to be put to this other witness?

Mr. McCRACKEN. That is one purpose. And we have another witness we would like to call.

The COURT. Very well.

WILLIAM N. COOK, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. McCracken:

Q. Mr. Cook, with whom are you presently employed?—A. E. B. Meyrowitz & Company.

Q. What is your position with Meyrowitz?—A. Vice president.

Q. Have you any other office?—A. Well, I am vice president and general manager.

Mr. McCracken. I wonder, your Honor, if we could not arrange by stipulation, as we did as to Mr. Potter, as to the qualification of the witness. I think that would save some time.

377 Mr. TOULMIN. I would be very happy to do so.

The Court. Yes.

Q. Mr. Cook, do you buy Univis blanks from Univis?—A. Yes.

Q. Do you buy rough blanks?—A. Yes.

Q. Do you buy semi-finished blanks?—A. Yes.

Q. Do you know the proportion of each which you buy from Univis?—A. I think the superintendent of our shops says about 50-50.

Mr. TOULMIN. If the Court pleases, I move to strike out that answer. It is purely hearsay.

The Court. Yes. The motion is granted.

Mr. McCracken. Was there a ruling, sir?

The Court. I granted the motion.

Q. Mr. Cook, what is the purpose of fitting the completed glasses to the face of the patient—

Mr. TOULMIN. We object unless it is confined to Univis.

Mr. McCracken. I had not finished, your Honor.

Mr. TOULMIN. I am sorry.

Q. When you receive Univis mounting containing the lens, what is your purpose? What do you aim to do in fitting it to the patient's face?—A. After it is finished?

Q. After you have received it from the shop, sir.—A. Well, they would not be able to wear them if they were  
378 not properly adjusted. There are many adjustments to be made: The distance from the eye, proper centering, tilting.

Q. Is that work done on the lens?—A. Well, the lens is affected by it.

Q. Is it done on the lens, sir?—A. Not on the lens; no.

Q. What tools do you use in that fitting?—A. Pliers.

Q. Do you have special pliers for fitting Univis?—A. No.

Q. Have you ever received special instructions from Univis as to fitting Univis lenses?—A. Yes.

Q. Will you expand on that, please, for the Court?—A. The segment of the Univis being different than other bifocals, we have



from time to time listened to the representatives of the Univis Lens Company, and we have also had our frame fitters and adjusters together to listen to the Univis men for such suggestions as they could make.

Q. What was the nature of those suggestions?—A. Well, as I recall, there were a number, but the height of segment for the different shapes of segment, the tilting and the centering—those are the principal factors, I think, brought out at those meetings.

Q. Could your men have picked that up by themselves?—A. Ultimately, after experience.

Q. Has Univis ever inspected your fitters?—A. I do not think so.

379 Q. Have they ever inspected the finished jobs as finished by your men?

Mr. TOULMIN. If the Court pleases, I—

The COURT. Sustained.

Q. When did you receive your Univis license, Mr. Cook, if you know?

Mr. TOULMIN. We object. It is immaterial when he received it. He has a license. That is the only material fact.

Mr. McCRACKEN. May it please the Court, my effort is to lead up to the line of question recently sustained in Mr. Glickfeld's examination of the previous witness, which same testimony had been previously excluded.

The COURT. Go ahead.

Q. Do you recall the time you received your license?—A. It is a guess entirely. Ten or twelve years, I should think. I do not recall exactly.

Q. Do you have knowledge of the negotiations?—A. I remember when the license proposition was put up to us at the time—

Q. You were present at the time?—A. But I do not remember any particular negotiations about it. It was just stated that this was a new policy of the Univis Company for marketing their lenses.

380 Q. Was it stated that all licenses would be similar in terms?

Mr. TOULMIN. We object, your Honor.

Mr. McCRACKEN. If he knows, your Honor.

The COURT. Do not lead him. I will sustain the objection.

Q. What representations were made at that time by Univis?

Mr. TOULMIN. We object.

The COURT. I will overrule the objection; but I am going to state, so you will understand my frame of mind in regard to the matter, that it would be an extremely unusual thing for a license to be accepted under any different understanding than that its

terms were similar to those given throughout at least the same community or area; and indeed, all of your licenses have been received in evidence as typical licenses.

Mr. McCracken. That is true, your Honor.

The COURT. And you do not have to use your imagination so much to reach the conclusion that all these licensees knew that they had a license agreement that was like other licenses. But that does not spell out conspiracy by a long shot.

Mr. McCracken. Thank you, your Honor.

No further questions.

Mr. Toulmin. That is all.

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*Statement by Mr. Disney*

Mr. Disney. I am about to conclude the Government's case, your Honor. Before we conclude, I want to make one very short statement, that I observed on reading the record that I had said that the Government was not contesting the validity of any of the patents, and that is quite true. However, to explain our stand, we had taken the stand that the claims of these patents cover only inventions or novelty, and invention of a process performed by the manufacturer, or an invention of a product produced by the manufacturer; and that in case it should turn out that the scope of these patents are expanded, I must reserve any right of the Government to challenge their validity, any right the Government might have.

The COURT. I do not understand your statement from start to finish, Mr. Disney. I do not know what you mean.

Mr. Disney. I am simply stating that the Government has taken the position that the patents of the defendants cover only an invention applicable to the processes of the manufacturer, and an invention of a product produced only by the manufacturer, and as such we are not challenging the validity of any of the patents; and if it should turn out that the defense disclosed a greater scope in the patent than that which I have outlined, if the Government at that time has any right to challenge the validity of those patents, I am reserving those rights.

The COURT. You do not have to reserve anything. The defense is going to put in its proof, and anything that is proper rebuttal will be admitted.

Mr. Disney. I was making this suggestion on account of a gratuitous statement that I made. On the opening day I said we were not directly challenging the validity of the patent.

That concludes the case of the Government.

Mr. Toulmin. Are you through with your case?

Mr. DISNEY. Yes. We rest.

The COURT. Are you ready to go on, Mr. Toulmin?

Mr. TOULMIN. Yes, your Honor.

The COURT. We will take a brief recess.

(Short recess.)

383

*Offers in evidence*

Mr. TOULMIN. May it please the Court, I shall be very brief. I have possibly one or two questions from one witness and then some formal matters to introduce, after which I will be through.

The COURT. The patents have not been offered yet.

Mr. TOULMIN. That is right, sir. That is the first thing I am going to do. Therefore, I ask leave to introduce the two trademarks which have a bearing on the fair trade agreements, and the 15 patents of this company as our Exhibit F.

(Marked "Defendants' Exhibit F.")

Mr. TOULMIN. I would also like to offer in evidence, and I have exhibited these to counsel, so they have seen them, the remaining type of blanks that we have used and that we make out in our plant.

I observed this morning that they had introduced, your Honor, two of the D type and one of the B type of blanks but they have not introduced any of the R type, so I offer in evidence our trademarked carton and the blank inside as a single exhibit.

(Marked "Defendants' Exhibit G.")

Mr. McCracken. Your Honor, I feel called upon to explain that those which were offered by the Government this morning constituted the only ones Mr. Potter could make available to us.

384 Mr. TOULMIN. I appreciate that fact, Mr. McCracken.

I had no ulterior motive in making the statement.

The COURT. What is this Exhibit G?

Mr. TOULMIN. It is flat at the top and flat the bottom and it has quite a deep segment.

I also wish to offer in evidence a trifocal type as our Exhibit H.

(Marked "Defendants' Exhibit H.")

Mr. TOULMIN. There are three different indices of a refraction in that, your Honor. It is a very interesting lens because it gives you an opportunity to take in the three different focal lengths in a single lens, so for instance if you are driving you can look at the dashboard, also look long distance and then directly in front of you at the steering wheel.

I would like also to offer in evidence the straight type trifocal blank as our Exhibit I.

(Marked "Defendants' Exhibit I.")

Mr. TOULMIN. And the last blank, our cataract bifocal as our Exhibit J.

(Marked "Defendants' Exhibit J.")

Mr. TOULMIN. I think, so that you will understand it, your Honor, that we should offer the sample case of the defendants showing the sample lenses of the different types in their finished form. I think this would be a very convenient way so that the Court could see the beginning and the end of the process. I therefore offer in evidence this sample case having in it two samples of the R segment, one of the D segment and one of the B segment as indicating the finished lenses.

(Marked "Defendants' Exhibit K.")

Mr. TOULMIN. Your Honor will recall in the opening statement, I exhibited this board showing how the blank was made and I think it would be useful to have it in evidence.

The COURT. Yes.

Mr. TOULMIN. We offer this board in evidence as our Exhibit L.

(Marked "Defendants' Exhibit L.")

Mr. TOULMIN. I find Judge Nevins' opinion, if the Court please, is not reported and I therefore take the liberty of offering a certified copy. I would like to have it marked so it will be our Exhibit M.

(Marked "Defendants' Exhibit M.")

Mr. DISNEY. At this time I would like the record to show that we have not been furnished with the record of that case. I requested that the first day. The record shows my request.

The COURT. Yes.

Mr. TOULMIN. I have conferred with Government counsel during the recess, if the Court pleases, and they are agreeable, as I understand it, to a stipulation that our number of licensees, as they have grown year by year, as appeared in the answer, may be stipulated as if proven in this case without calling a witness as to that technical detail.

Mr. DISNEY. That is agreeable.

Mr. TOULMIN. Then I have one or two questions to ask Mr. Silverman.

JACK R. SILVERMAN called as a witness on behalf of the Defendants, being duly sworn, testified as follows.

Direct examination by Mr. TOULMIN:

Q. Mr. Silverman, do you require, under your contracts or otherwise, that your licensees deal only in the Univis products?—

A. No.



Mr. GLICKFELD. Objection, your Honor. I think the contracts speak for themselves.

The COURT. There has been a little latitude given about these matters, and I will permit that question. As a matter of fact, I think it has been established that the licensees do deal in other products through Mr. Silverman when he was on the stand before. Either you developed that or it was developed by Colonel Toulmin.

387 Mr. TOULMIN. I did not cross-examine, your Honor, so it must have been by Government counsel.

Q. Do you receive any reports from your salesmen as to the number of competitive products that are sold by your licensees? That is, the proportion of Univis to the other competitive products in the trade?—A. Yes.

Mr. TOULMIN. I will have that these reports be marked for identification.

(Marked "Defendants' Exhibit N" for identification.)

Q. Will you kindly look at the salesmen's reports and tell us where they came from?—A. These reports come from the files of the Univis Lens Company and the Univis Corporation.

Q. From what territory do these reports come?—A. From the State of Ohio.

Q. Do you find there any entry of the proportions of the lenses or blanks used and sold by the licensees other than Univis, as well as Univis?—A. Yes.

Q. Have you calculated or had calculated the percentage of blanks or lenses used by Univis licensees as compared to the other products used by them or sold by them?—A. Yes.

Mr. DISNEY. I object to that. You have objected all along to evidence concerning other products, insisting that the case here concerned itself solely with the distribution of Univis products.

If you are willing to stipulate that it does concern other products, I will be happy to have that stipulation.

388 Mr. TOULMIN. Under our dissents under the fair trade act, we wish to show that these lenses are in free and open competition, and the relative position of these lenses and blanks in such competition comes within the fair trade act.

The COURT. That would make the evidence admissible, but it is doubtful whether you could establish the figures which you now propose to do. These reports are made by people who are not here for cross-examination.

Mr. TOULMIN. But they come from the regularly established records of the company and I believe under the authorities they could be competent.

The COURT. Well, go ahead.



Q. Will you answer what percentage of Univis as compared to the others you have had calculated, Mr. Silverman?—A. 5.6 percent.

Mr. TOULMIN. I see no reason in encumbering the record with these reports as an exhibit because I merely wanted to have the original documents here and they have been identified.

Mr. DISNEY. I would like to examine them. Do you propose to bring out the percentage of single lens business and frame business?

Mr. TOULMIN. Yes.

389 Q. Mr. Silverman, will you tell us whether this 5 percent has reference solely to lens business or includes any other proportion of the business.—A. It refers solely to bifocal and multi-bifocal lenses. It has nothing to do with frames or single vision lenses.

Mr. TOULMIN. That is all.

Cross-examination by Mr. DISNEY:

Q. How is that percentage computed, Mr. Silverman?—A. By the request of the Univis representative to the licensee as to the total number of bifocals that he uses, and is broken down into the different types he uses. The licensee will offer that information to our representatives.

Q. This is a percentage of bifocals and not a percentage of dollar value, is that right?—A. Number of bifocals, that is correct.

Q. Have you any idea as to the percentage of Univis sold in dollar value as compared with the percentage of other bifocals sold in dollar value?—A. In the United States, you mean?

Q. No, as to the Ohio licensees.—A. I am afraid I would not be competent to give you exact figures. I could estimate, but I do not think I would be very competent, because I have not of my own knowledge made such a survey. It would be a very small percentage; extremely small.

Mr. DISNEY. That is all.

390

*Defendants' motion to strike*

Mr. TOULMIN. Now, if the Court pleases, I would make to make a motion to strike out all the evidence of the plaintiff as to that testimony which deals with intent or motive on the part of the defendants, or reasons for refusing the granting of licenses or cancelling them, and particularly with reference to Plaintiff's Exhibits 15 to 43, inclusive.

The COURT. I will reserve decision.

Mr. TOULMIN. The defendants rest, if the Court pleases.

The COURT. Is there anything further, Mr. Disney?

Mr. DISNEY. No, your Honor. The Government rests.

The COURT. Both sides rest. Do you want to have oral argument? I do not mean now, but at some future date, and if so, when will you be ready to file your briefs?

Mr. DISNEY. Can counsel get together on that, your Honor?

The COURT. Yes.

Mr. DISNEY. We will be ready to file our brief in ten days.

Mr. TOULMIN. If the Court please, I would like to have the opportunity, after the Government submits its brief, to have ten days for our reply, if the Court would grant me that opportunity and a suitable time for argument at your Honor's convenience.

The COURT. All briefs then to be in on the 30th of 391 June. I suppose you will want to read defendants' brief before argument?

Mr. DISNEY. That is right, your Honor. I would like that.

The COURT. That would take us into July.

Mr. DISNEY. However, two or three days would be quite ample.

The COURT. Then I will set July 7th, at 11:00 o'clock a. m., for the argument here.

Mr. TOULMIN. May I inquire as to whether your Honor wishes to have any proposed findings or whether it is your custom to request findings of fact and conclusions of law from counsel?

The COURT. No. I do not make that request, because I write my opinion without regard to that anyhow. I suppose your briefs and arguments will cover everything and then my opinion will be likely to cover everything that I think is important in this case. Then the findings of fact and conclusions of law which are to be submitted are only those which will be in conformity with the opinion.

Mr. DISNEY. There is one other thing I forgot to say and perhaps it is not too late, and that is we were going to put in the dates of publication on our advertisements. I stipulated that with counsel.

The COURT. Yes.

(Adjourned to July 7, 1941, at 11:00 o'clock a. m.)

392 [Clerk's certificate to foregoing transcript omitted in printing.]

393

*Exhibit No. 2*

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement by and between The Univis Corporation, a Delaware corporation, with its principal office and place of business at Wilmington, Delaware, and The Univis Lens

Company, an Ohio corporation, with its principal office and place of business at Dayton, Ohio, witnesseth:

Whereas, United Kingdom Optical Company, Ltd., has had an exclusive license agreement with The Univis Lens Company relative to the manufacture and sale of lenses in the United States pursuant to certain patents and/or applications on lenses, as more fully set forth in contracts between the parties hereto of August 27, 1926, November 23, 1926, July 12, 1927, and July 1, 1928; and by a contract of even date herewith these contracts have been suspended and modified to permit The Univis Corporation, a Delaware corporation, to enter into an exclusive license arrangement between it and United Kingdom Optical Company, Ltd., to which The Univis Lens Company, an Ohio corporation, is desirous of consenting.

Now, therefore, in consideration of the mutual promises exchanged herein, and other good and valuable considerations hereinafter acknowledged and to be paid pursuant to this contract, the parties hereto agree as follows:

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AGREEMENT TO UNIVIS CORPORATION LICENSE

1. The Univis Lens Company, an Ohio corporation, agrees to the contract of even date herewith entered into between The Univis Corporation and United Kingdom Optical Company, Ltd., relative to the manufacture, sale, and sublicense for manufacture and sale of eyeglass lenses under the patents and/or applications of United Kingdom Optical Company referred to in said contracts.

ROYALTY

2. The Univis Lens Company by a contract of even date herewith with United Kingdom Optical Company, Ltd., agrees to buy from United Kingdom Optical Company, Ltd., certain quantities of lenses and on other terms and conditions has the right to manufacture and sell said lenses in the United States, and The Univis Corporation agrees to this arrangement; and further the parties agree that as to all lenses manufactured in the United States and sold in the United States by The Univis Lens Company a royalty of Fifty (50) cents per pair shall be paid by The Univis Lens Company to The Univis Corporation; and The Univis Corporation agrees to pay to United Kingdom Optical Company, Ltd., any and all royalties thereon as The Univis Corporation may agree with United Kingdom Optical Company, Ltd.

TRADE-MARKS

3. The Univis Lens Company hereby agrees to assign, sell, and set over the entire right, title, and interest in and to the trade-

mark "Univis" for eyeglasses, No. 235,817, registered November 29, 1927, in the United States Patent Office, the entire right, title, and interest in and to said registration and all causes of action now accrued and to accrue in the future, together with the goodwill and business appertaining thereto; and agrees to assign the trade-mark, trade-mark rights, trade-mark registrations and goodwill and businesses appertaining thereto with respect to the State trade-mark registrations of the trade-mark "Univis" for eyeglasses in the following States, to wit: New York, Pennsylvania, Massachusetts, Ohio, Illinois, Indiana, Michigan, and California.

## TRADE-MARK LICENSE

4. It is agreed between the parties that in consideration of said transfers enumerated in the foregoing paragraph The Univis Corporation hereby licenses and gives permission to The Univis Lens Company to continue to use the trade-mark "Univis" on all lenses and eyeglasses sold by it during the period of this contract.

## SALES PROMOTION AND APPROVED LIST

5. The Univis Corporation agrees to conduct the sales promotion work for the promotion of the sale of the lenses which are the subject matter of this contract throughout the United States, to investigate the standing of prospective purchasers and to establish an approved list to which The Univis Lens Company can sell its lenses, and The Univis Lens Company agrees to sell to no others than those appearing from time to time on said approved list as established by The Univis Corporation, and any changes in that list will be immediately and promptly communicated to The Univis Lens Company simultaneously with any communication of the contents thereof to any other of the sublicensees of The Univis Corporation, it being the intent and purpose of this contract that no greater rights shall be given to any other sublicensee of The Univis Corporation than given in this contract to The Univis Lens Company; and if any greater rights are ever given at any time, then they shall equally apply to The Univis Lens Company.

## LIFE OF THE CONTRACT

6. The life of this contract shall be for the life of the contract between United Kingdom Optical Company, Ltd. and The Univis Corporation, a Delaware corporation.



ASSIGNMENT OF PATENTS

7. As a further consideration, The Univis Lens Company agrees to assign of even date herewith the patent applications and/or patents it may possess to the extent that it owns them after assigning one-half interest therein to United Kingdom Optical Company, Limited.

LICENSE UNDER FUTURE DEVELOPMENTS

8. It is further agreed between the parties that any patents and/or applications acquired by The Univis Corporation in the future shall be immediately communicated to The Univis Lens Company and a right to manufacture, use and/or sell thereunder be given to The Univis Lens Company without further payment of royalty.

397 In witness whereof, the parties hereto have hereunto set their hands by their duly authorized Presidents, and/or Vice Presidents and Secretaries, and affixed their corporate seals at Dayton, Ohio, this 17th day of March 1931.

[SEAL]

THE UNIVIS CORPORATION,  
By M. H. STANLEY,  
*Vice President.*

Attest:

MARIE RIEGELSPERGER,  
*Asst. Secretary.*

Witnesses:

L. V. BROWNE.  
F. W. SCHAEFER.

[SEAL]

THE UNIVIS LENS COMPANY,  
By D. M. BROCK, *Vice President.*

Attest:

MARIE RIEGELSPERGER,  
*Asst. Secretary.*

Witnesses:

L. V. BROWNE.  
F. W. SCHAEFER.

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*Exhibit #3*

399

AMERICAN OPTICAL COMPANY TO THE UNIVIS LENS  
COMPANY AGREEMENT DATED AUGUST 8, 1934

400

Memorandum of Agreement between The Univis Corporation, a corporation of the State of Delaware, having a principal place of business at Dayton, Ohio, and/or its licensee, The Univis Lens Company, a corporation of Ohio, having a



principal place of business at Dayton, Ohio, said two parties hereinafter termed the Licensee, and the American Optical Company, a voluntary association of the State of Massachusetts, having a principal place of business at Southbridge in said State, and the American Optical Company, a Massachusetts corporation, having a principal place of business at Southbridge, Massachusetts, said two parties hereinafter termed the Licensor, dated the 8th day of August 1934; witnesseth, that

Whereas, the said two parties are both manufacturers of multifocal and bifocal lenses, and both have certain patent rights on multifocal and bifocal lenses, and litigation has arisen between the said parties relative to said patent rights and that the said parties are both desirous of settling the said litigation and the conflict between their respective patent rights;

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the said parties hereto agree as follows:

1. The parties release each other and the customers of each other from any claims on account of infringement of any patents arising out of the manufacture, use, or sale of multifocal and/or bifocal lenses of the types now being manufactured by the respective parties, and both parties agree to cause all litigation pending between them to be discontinued at once and agree that in future neither party will bring suit against the other or the other's customer's for infringement of any of its patents because of the manufacture, sale or use of multifocal and/or bifocal lenses of the types now being manufactured by the respective parties.

2. The said Licensor is the owner of the entire right, title, and interest in and to an invention for multifocal lenses and in and to United States Letters Patent Reissue No. 17,887 to E. D. Tillyer, issued November 25, 1930, covering the said invention, and hereby gives and grants to the said Licensee a right and license, but not the exclusive right and license, to make, use, and sell lenses embodying the inventions of said patent.

3. The said Licensee is the owner of the entire right, title, and interest in and to certain inventions for multifocal and/or bifocal lenses and in and to United States Letters Patent No. 1,401,238 to Clement (issued December 27, 1931) and No. 1,899,777 to Stanley (issued February 28, 1933), covering the said inventions, and hereby gives and grants to the said Licensor a right and license, but not the exclusive right and license, to make, use and sell lenses embodying the inventions of said patents.

4. It is mutually understood and agreed that the license herein granted to the Licensee under the said Tillyer patent is confined to, and extends only to the right to make, use, and sell

the multifocal and/or bifocal lenses of the type the Licensee is now marketing under the name "Univis," namely, a lens having a reading field or segment having a continuous straight top line, and that the license herein granted to the Licensor under the said patent rights of the Licensee is confined to, and extends only to the right to make, use, and sell multifocal and/or bifocal lenses, such as they are now making under the name "Ful-vue,"—namely, a lens having a reading field or segment that does not have a continuous straight top line. The parties hereto mutually agree to maintain this distinction between their multifocal and/or bifocal products produced under this agreement.

5. The Licensee has certain agreements relating to Patent Rights with the United Kingdom Optical Company of London, England, which company has joined with the Licensee in certain of the litigation against the Licensor. It is mutually understood and agreed that the Licensee will hold the licensor and its customers harmless, and take over and defend any litigation brought or maintained by the said United Kingdom Optical Company, Limited, or its successors, against the Licensor or its customers on account of the exercise of the licenses herein granted or the manufacture, use or sale of multifocal and/or bifocal lenses of the types now being manufactured by the licensor.

6. This license and agreement shall be binding on the licensee, its privies in the patent rights herein granted, and its or their successors and assigns, and on the licensor, its successors and assigns.

403 In witness whereof, the parties hereto have executed this instrument on the date before written and have delivered one copy each to the other.

THE UNIVIS CORPORATION,  
By N. M. STANLEY,  
THE UNIVIS LENS COMPANY,

By N. M. STANLEY,  
AMERICAN OPTICAL COMPANY,  
(Voluntary Association),

By IRA MOSHER,  
Vice Pres. and Gen. Manager.  
AMERICAN OPTICAL COMPANY,  
(Corporation),

By IRA MOSHER,  
Vice Pres. and Gen. Manager.

COUNTY OF MONTGOMERY,  
State of Ohio, ss.

On this 4 day of Aug. 1934, before me, a Notary Public in and for the County of Montgomery and State of Ohio, personally

came N. M. Stanley, the President of The Univis Corporation, a corporation herein named, to me known and known to me to be the person who executed the above instrument, who, being by me duly sworn, says that he is the President of the said The Univis Corporation, that he knows the seal of said corporation, that the seal affixed to the above instrument is the seal of said corporation, and was affixed thereto by him by authority of the officers of  
404 said corporation, and that he executed the above instrument as the President of the said corporation and by like authority as the free act and deed of said corporation.

RUSSELL V. FOX,  
Notary Public.

COUNTY OF MONTGOMERY,  
*State of Ohio, ss.*

On this 4 day of Aug. 1934, before me, a Notary Public in and for the County of Montgomery and State of Ohio, personally came N. M. Stanley, the President of The Univis Lens Company, a corporation herein named, to me known and known to me to be the person who executed the above instrument, who, being my me duly sworn, says that he is the President of the said The Univis Lens Company, that he knows the seal of said corporation, that the seal affixed to the above instrument is the seal of said corporation and was affixed thereto by him by authority of the officers of said corporation, and that he executed the above instrument as the President of the said corporation and by like authority as the free act and deed of said corporation.

RUSSELL V. FOX,  
Notary Public.

COUNTY OF WORCESTER,  
*State of Massachusetts, ss.*

On this 8th day of August, 1934, before me, a Notary Public in and for the County of Worcester and State of Massachusetts, personally came Ira Mosher, the Vice Pres. and Gen. Manager of the American Optical Company, a voluntary association of  
405 Massachusetts, to me known and known to me to be the person who executed the above instrument, who, being by me duly sworn, says that he is the Vice Pres. and Gen. Manager of the said American Optical Company, that he knows the seal of said association, that the seal affixed to the above instrument is the seal of said association and was affixed thereto by him under authority of a declaration of trust creating said association, and that he executed the above instrument as the Vice Pres. and Gen. Manager of said association and by like authority as the free act and deed of said association.

LOUIS L. GAGNON,  
Notary Public.

COUNTY OF WORCESTER,

STATE OF MASSACHUSETTS, ss.

On this 8th day of August 1934, before me, a Notary Public in and for the County of Worcester and State of Massachusetts, personally came Ira Mosher, the Vice Pres. and Gen. Manager of the American Optical Company, a corporation herein named, to me known and known to me to be the person who executed the above instrument, who, being by me duly sworn, says that he is the Vice Pres. and Gen. Manager of the said American Optical Company, that he knows the seal of said corporation, that the seal affixed to the above instrument is the seal of said corporation, and was affixed thereto by him by authority of the officers of said corporation, and that he executed the above instrument as the Vice President and Gen. Manager of the said corporation and by like authority as the free act and deed of said corporation.

LOUIS L. GAGNON,  
Notary Public.

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Exhibit 4

MEMORANDUM OF AGREEMENT WITH DISTRIBUTOR

This Memorandum of Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ A. D., 19\_\_\_\_, by and between The Univis Corporation, a Delaware corporation, with its principal office and place of business at Wilmington, Delaware, with an office and place of business at Dayton, Ohio, and \_\_\_\_\_ Company, of \_\_\_\_\_, with its principal office and place of business at \_\_\_\_\_, witnesseth:

Whereas, The Univis Corporation has the sole and exclusive right in the United States and its possessions under certain patents now issued and expected to issue, for the manufacture, use, and sale of bifocal eyeglass lenses and blanks; and \_\_\_\_\_ Company is desirous of being placed upon the approved list to purchase from the approved manufacturing licensees of The Univis Corporation, rough lens blanks embodying one or more of said inventions and the subject matter of the patents covering said inventions and protected by Federal and State Trade-marks, and of completing the manufacture thereof according to suitable prescriptions for the use of the purchaser who will wear the resulting bifocal eyeglass lenses;

Whereas, The Univis Corporation is limiting the right to manufacture, use, and/or sell to manufacturers of the rough lens blanks of the highest quality on strict specifications, and is limiting the



purchasers thereof for further finishing in the complete eyeglass lenses to a select list of licensees, of which the ----- Company is desirous of becoming one, for the purpose of maintaining said quality in the finish and final delivery of the Univis bifocal lenses which are the subject-matter hereof to the ultimate purchaser and wearer;

Now, therefore, in consideration of the mutual promises herein exchanged, and other good and valuable considerations hereinafter acknowledged and to be paid pursuant to this contract, the parties hereto agree as follows:

1. License.—The Univis Corporation hereby grants under the following patents and applications, the non-exclusive, non-assignable, revocable right to complete the manufacture of Univis bifocal lenses from rough lens blanks purchased only from the authorized manufacturing licensees of The Univis Corporation (of which the ----- Company will be advised from time to time) and to sell said finished Univis bifocal lenses made from said blanks only in accordance with the terms and conditions set forth herein and as may be established from time to time pursuant to this contract, under the following patents now owned and patents which may issue to The Univis Corporation in the future, such present patents being the following:

- U. S. Letters Patent No. RE 19,142.
- U. S. Letters Patent No. 1,632,208.
- U. S. Letters Patent No. 1,729,654.
- U. S. Letters Patent No. 1,822,606.
- U. S. Letters Patent No. 1,845,940.
- U. S. Letters Patent No. 1,868,863.
- U. S. Letters Patent No. 1,876,497.
- U. S. Letters Patent No. 1,879,769.
- U. S. Letters Patent No. 1,886,649.
- U. S. Letters Patent No. 1,899,777.
- U. S. Letters Patent No. 1,906,672.
- U. S. Letters Patent No. 1,912,165.
- U. S. Letters Patent No. 1,924,336.
- U. S. Letters Patent No. 1,932,100.
- U. S. Letters Patent No. 1,949,698.
- 407 U. S. Letters Patent No. 1,949,699.
- U. S. Letters Patent No. 1,958,729.
- U. S. Letters Patent No. 1,971,394.
- U. S. Letters Patent No. 1,981,815.
- U. S. Letters Patent No. 1,996,442.
- U. S. Letters Patent No. 2,025,892.
- U. S. Letters Patent No. 2,025,893.
- U. S. Letters Patent No. 2,032,796.



U. S. Letters Patent No. 2,033,573.

U. S. Letters Patent No. 2,053,551.

any additional patents issued to or acquired by The Univis Corporation shall be communicated to \_\_\_\_\_ Company from time to time as they issue, and said letter of communication shall be attached hereto and become a part hereof with the same force and effect as if inserted herein at the signing hereof.

2. **Approved List.**—It is further agreed between the parties as the essence of this contract that \_\_\_\_\_ Company will sell the Univis bifocal eyeglass lenses which are the subject matter hereof only to such persons, firms, corporations, trust estates, partnerships, and/or other entities within the United States and its possessions, and only to those designated from time to time by The Univis Corporation as being upon an approved list to purchase from the \_\_\_\_\_ Company the subject matter hereof, and agree to sell no blanks as blanks except to licensed Finishing Licensees whose names appear as such on the approved list of The Univis Corporation.

3. **Price.**—The \_\_\_\_\_ Company agrees to sell Univis bifocal lenses in finished or uncut form at the present Prescription schedule of prices established by The Univis Corporation; and agrees to furnish partly finished Univis lenses, embodying the inventions herein, at the present Finishing Licensee schedule of prices established by The Univis Corporation; or modifications thereof as may be established from time to time by The Univis Corporation and communicated by it to the \_\_\_\_\_ Company.

4. **Rebate.**—The \_\_\_\_\_ Company hereby agrees not to give away, sell, or offer for sale, either directly or indirectly, semifinished or finished Univis lenses at less than the price stipulated herein, together with discounts and terms as fixed by The Univis Corporation, or as may be modified by it from time to time, and agrees not to attempt to or actually evade the intent and purpose of this contract by the giving of rebates, discounts, concessions, extra merchandise, or by any other means which would vary the actual price at which the subject matter hereof is sold;

5. **Quality.**—The licensee agrees to employ good material and workmanship in completing the manufacture of Univis bifocal lenses and conduct the business honorably and skillfully so as to endeavor to make and maintain the reputation for the lenses which are the subject matter of this contract, to keep complete, exact, and full accounts of all sales and the prices at which sold, and the names of the purchasers, firms, corporations, etc., to whom sold, and shall allow this corporation and/or its duly accredited representatives to examine its books at all reasonable times and to take copies thereof.

6. Consideration.—That the consideration for this contract passing between the parties is the placing of the \_\_\_\_\_ Company by the Univis Corporation upon the approved list to enable the Company to purchase from the manufacturing licensees of The Univis Corporation rough lens blanks at the minimum jobber's price and is licensed to complete said lenses, completing the manufacturing and finishing thereof for customers in accordance with the terms of this contract;

7. Violation.—The licensee further agrees to notify the corporation of any violation on the part of any jobbers or other licensees of the agreements respectively made by them with the corporation, and to assist the corporation in all possible ways in securing evidence against, and enforcing its agreements with such jobbers and licensees.

8. Trade-mark.—It is further agreed between the parties that the subject matter shall only be sold under the name "Univis" and that no other lenses and/or blanks will be sold by 408 the \_\_\_\_\_ Company under the name "Univis"; and that \_\_\_\_\_ Company will cease to use the name "Univis" upon termination of this contract, and only use the name "Univis" on the subject matter of this contract.

9. Term.—It is further agreed and understood between the parties that this agreement and license shall remain in full force and effect for a period of \_\_\_\_\_ years; and shall be subject to renewal from time to time provided the terms and conditions hereof have been fully kept by the \_\_\_\_\_ Company; and it is further agreed that in the event that the \_\_\_\_\_ Company violates any provision hereof, The Univis Corporation shall have the right to forthwith, upon notice in writing to the \_\_\_\_\_ Company, cancel this contract, to remove the \_\_\_\_\_ Company from its approved list, to notify all concerned of this action, and to notify the public, if necessary, that the \_\_\_\_\_ Company is no longer a licensee of The Univis Corporation.

Witness:

THE UNIVIS CORPORATION.

\_\_\_\_\_  
*President.*

Witness:

\_\_\_\_\_  
*Secretary.*

\_\_\_\_\_  
*President.*

\_\_\_\_\_  
*Secretary.*

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# UNIVIS PRESCRIPTION PRICE LIST

Prices quoted are per pair for white lenses, edged, mounted or inserted.  
For UNCUT, deduct 50c per pair from edged prices.

## STYLES "B" AND "D"

### SPHERICAL—(Convex or Concave)

Pl to 5.00	\$ 6.50
5.25 to 7.00	7.50
7.25 to 10.00	9.50
10.25 to 16.00	11.00
16.25 to 20.00	12.00

### PLANO CYLINDERS—(Concave)

0.12 to 3.00	\$ 7.00
3.25 to 6.00	8.50

### SPHERO CYLINDERS + C — and — C —

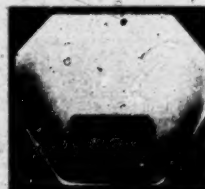
0.12 to 3.00	0.12 to 3.00	\$ 7.00
	3.25 to 6.00	8.50
	6.25 to 8.00	10.25
	8.25 to 10.00	12.25
	10.25 to 16.00	14.50
3.25 to 7.00	0.12 to 3.00	\$ 8.50
	3.25 to 6.00	9.75
	6.25 to 8.00	11.25
7.25 to 10.00	0.12 to 3.00	\$10.00
	3.25 to 6.00	11.00
	6.25 to 8.00	12.50
10.25 to 20.00	0.12 to 3.00	\$13.00
	3.25 to 6.00	14.00
	6.25 to 8.00	16.00

Plus combined with plus prescriptions are classified in transposed form, as all Univis are made with concave cylinders.

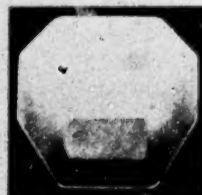
## SPECIAL CHARGES AND EXTRAS

Add to above for:

	Per Pair
TINTED—Three Univis tints—No. 1 (light); No. 1½ (medium) and No. 2 (dark)—also available in Univis Crookes "A", "B", and "C"	\$2.00
Resurfacing—Spherical \$1.50 per surface; cylindrical \$1.25 per surface	
Oval Lenticulars	4.00
Round Lenticulars	2.00
Prism in distance ½ Δ to 3½ Δ	1.50
Prism in distance 4 Δ to 7 Δ	2.00
Prism in distance over 7 Δ	3.00
Bi-Centric (Slabbing-off) Prism	applies to one lens only, \$2.00
Oval, Octagon, Perimetric or special shapes	usual extra applies
Polished Edges	usual extra applies
Enamelled Edges	usual extra applies
Lenses requiring blanks over 54mm	3.50
Special fusing of special curves or adds	1.50
Extra large segments requiring special fusing (price on request)	



Style "D"



Style "B"

# UNIVIS PRESCRIPTION PRICE LIST

Prices quoted are per pair for white lenses—edged, mounted on insert.  
For UNCUT, deduct 50c per pair from edged prices.

## UNIVIS "R" STYLE

### SPHERICAL—(Concave or Convex)

Pl. to 3.00	\$ 7.25
3.25 to 7.00	8.25
7.25 to 10.00	10.25
10.25 to 16.00	11.50
16.25 to 20.00	12.50

### PLANO CYLINDERS—(Concave)

0.12 to 3.00	\$ 7.75
3.25 to 6.00	9.25

### SPHERO CYLINDERS + C — and — C —

0.12 to 3.00	0.12 to 3.00	\$ 7.75
	3.25 to 6.00	9.25
	6.25 to 8.00	10.75
3.25 to 7.00	0.12 to 3.00	\$ 9.25
	3.25 to 6.00	10.25
	6.25 to 8.00	11.75
7.25 to 10.00	0.12 to 3.00	\$10.50
	3.25 to 6.00	11.50
	6.25 to 8.00	13.00
10.25 to 20.00	0.12 to 3.00	\$13.50
	3.25 to 6.00	14.50
	6.25 to 8.00	16.50

For segments over 25 mm. in diameter, extra per pair \$1.00

Plus combined with plus prescriptions are classified in transposed form, as all Univis are made with concave cylinders.

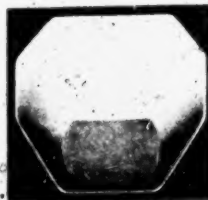
For UNCUT, deduct 50c per pair from edged price.

See Page 5 for extras.

### "R" PRISM SEGMENT (Prism in segment only)

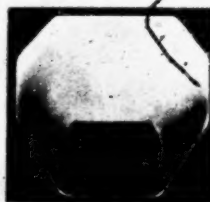
For prism in "R" segment, add to the above schedule of Style "R" prices as follows:

Prism in segment up to $1\frac{1}{2}\Delta$ , additional per pair	\$ 3.50
Prism in segment of $1\frac{1}{2}\Delta$ to $3\Delta$ , additional per pair	5.00



Style "R"

The "R" segment was developed as a vocational lens for cases where a very recently wide reading field is necessary. The symmetrical segment with its straight top and straight bottom gives a far greater lateral field of vision than is obtainable in any other shape. The segment is 14 millimeters high, standard width is 22mm., but it can be made from 19 mm. to 25 mm. wide.



"R" Prism Segment

Prism in segment only—From 50c to \$3.00, here on, cut up or down or at any angle—is available in "R" Prism Segment, the nearest of any fused prism segment. Top and bottom lines are equal in length. It has, of course, the advantages of the distinctive straight top. Segment 22 mm. by 14 mm. as recommended in most cases as sufficient and less visible.

# UNIVIS PRESCRIPTION PRICE LIST

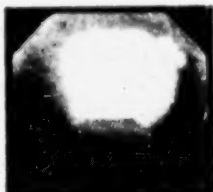
*Prices quoted are per pair for white lenses—edged, mounted or inserted.  
For UNCUT, deduct 50¢ per pair from edged prices.*

## COMPENSATED UNIVIS BIFOCALS



\$1.00 per pair additional to the schedule of prices of style "R" listed on preceding page.

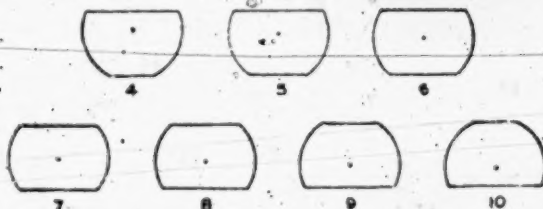
With slight variations in the length of the top and bottom line, prism in limited amounts (base up and down) can be secured in segment to neutralize limited amounts of vertical imbalance due to differences in distance corrections. The top and bottom lines are very thin and practically invisible on the face, so that this figure represents the least objectionable method securing vertical prism and properly centering reading segments at the near point in cases of anisometropia.



### COMPENSATED SEGMENTS

4 to 10

The numbers also indicate in millimeters the position of the optical centers of segments in relation to the top of the segments.



*Prism in Segment, any base, is available only in "R" Style and Circular Prism Segment.  
With Bi-Centric (Slab-off) grinding Styles B, D, or R may be used for vertical prism.*

## CIRCULAR PRISM SEGMENT BIFOCAL

SPHERICAL: 1 to 2 base in or out in segments

Pl. to 4.00  
4.25 to 7.00  
7.25 to 10.00

\$10.00  
11.00  
13.00

### GLASS AND COMPOUNDS

0.12 to 4.00 (2.12 to 3.00)  
4.25 to 7.00 (3.25 to 6.00)  
7.25 to 10.00 (6.25 to 8.00)

\$10.50  
11.50  
13.50

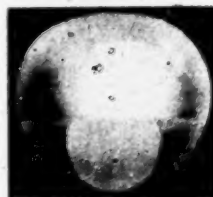
Prism in segments over 2.00 add

\$ 2.00

For UNCUT deduct 50¢ per pair from edged price.  
See Page 3 for other extras.



Circular Prism Segment



Bi-Centric (Slab-Off) Prism

## BI-CENTRIC (Slabbing-Off) PRISM

Correcting vertical imbalances of 2 degrees or more. This prism is added in the lower portion of one lens only. This method provides prism in the segment only without adding materially to the thickness.

Slab-Off Prism can be used in either B, D, or R style.

Extra charge per lens in any prism power

\$2.00



## UNIVIS PRESCRIPTION PRICE LIST

Prices quoted are per pair for white lenses—edged, mounted or unmounted.  
For UNCUT, deduct 50c per pair from edged prices.

## TRIFOCALS

SPHERICAL—(Convex or Concave)	Regular Trifocal	Straight top Trifocal
Pl. to 3.00	\$10.00	\$11.00
3.25 to 7.00	11.00	12.00
PLANO CYLINDER		
0.12 to 3.00	\$10.50	\$11.50
3.25 to 6.00	11.50	12.50
SPHERO CYLINDERS + C — and — C —		
0.12 to 3.00	\$10.50	\$11.50
3.25 to 6.00	11.50	12.50
6.25 to 8.00	13.50	14.50
0.12 to 3.00	\$11.50	\$12.50
3.25 to 6.00	12.50	13.50
6.25 to 8.00	15.00	16.00
0.12 to 3.00	\$13.00	\$14.00
3.25 to 6.00	14.00	15.00
6.25 to 8.00	17.00	18.00



Regular Trifocal  
Intermediate is approximately one-half reading addition.



Straight Top Trifocal  
Intermediate is approximately one-half reading addition.

## DOUBLE SEGMENT TRIFOCALS

(segments top and bottom)

SPHERICAL—(Convex or Concave)	Regular Trifocal	Straight top Trifocal
Pl. to 3.00	\$11.50	\$12.50
3.25 to 7.00	12.50	13.50
PLANO CYLINDER		
0.12 to 3.00	\$12.00	\$13.00
3.25 to 6.00	13.00	14.00
SPHERO CYLINDERS + C — and — C —		
0.12 to 3.00	\$12.00	\$13.00
3.25 to 6.00	13.00	14.00
6.25 to 8.00	15.00	16.00
0.12 to 3.00	\$13.00	\$14.00
3.25 to 6.00	14.00	15.00
6.25 to 8.00	17.00	18.00



Double U

Top and bottom segments can be varied both as to shape and thickness must specify in millimeters the vertical separation between the two segments and the inclination for each.

Plus combined with plus prescriptions are classified in transposed form, as all Univis are made with concave cylinders.

## Add to above:

Special intermediate additions on regular or straight top Trifocals.

For Double R segment.

For UNCUT, deduct 50c per pair from edged price.

See Page 3 for other specials.

Per Pair

\$ 1.50

\$ 1.00

## UNIVIS PRESCRIPTION PRICE LIST

Prices quoted are per pair for white lenses—edged, mounted or inserted.

## UNIVIS CATARACT LENSES



Cataract (Regular Fused) Bifocal



Cataract (Bifentric) Bifocal



Single Vision (Fused) Cataract

Cataract Bifocal spheres and compounds (all foci), (edged round or oval)	\$28.00
Cataract Single Vision (all foci), (edged round or oval)	17.00
Add for tinted	2.00
Add for shapes other than round or oval	1.50
For uncut deduct 75c per pair.	

Single Vision Cataract has 26 mm. field. Regular Cataract Bifocal fused is available with 23 or 25 mm. distance field.

The Bifentric Cataract Bifocal has straight top segment; distance field larger than any other lightweight cataract lens; distance field 30mm. diameter, achromatic one-piece construction. Straight-top reading section gives wider, clearer, more accurate vision. Segments displaced nasalward—rights and lefts.

## NEGATIVE TRIFIELD LENSES

(Three fields having equal powers)

Negative Trifield spheres, any foci (concave)	\$14.00
Negative Trifield compounds, any foci (concave)	16.50
Add for Tinted	2.00

For UNCUT, deduct 75c

See Page 5 for notes.



Trifield Negative

# UNIVIS PRESCRIPTION PRICE LIST

## UNIVIS TELESCOPIC SPECTACLES

### ALL GLASS UNITS



Univis Distance Unit

1.5x  
and  
2.0x



Univis Reading Unit

Univis Telescopic 1.5x Unit, each	\$22.00
Univis Telescopic 2.0x Unit, each	26.00
Distance Rx added to Unit, each	4.00
Reading Cap. any addition, each	4.00



Reading Cap Affixed to Unit

The primary advantages of the Univis Telescopic Spectacle over other types are:

1. Unobstructed peripheral or marginal vision surrounding the telescopic unit itself;
2. Exceedingly lessened conspicuousness;
3. Adaptability to ordinary spectacle frames (preferably a metal frame with adjustable guard arms);
4. Facile eccentric positioning and angling of unit itself to accommodate best paramacular vision;

5. Comparative lightness in total weight;

6. Maximum transmission of light due to all-glass construction.

In writing your Rx order for a pair of telescopic spectacles, just write the distance Rx and reading addition as you ordinarily do, and state "combined with UNIVIS 1.5x (or 2.0x) telescopic unit." Always give us the distance Rx and the reading addition (if any) even though the glasses are to be worn only for reading; never give merely the total reading Rx.

Be certain to specify if the telescopic spectacles are to be worn for distance only, for distance and for reading, or for reading only.



MULTI-FOCAL LENSES OF PRECISION . . . PROTECTED SERVICE

## Complete Multi-focal Service

## UNIVIS PRESCRIPTION PRICE LIST

Issued by The Univis Corporation, Dayton, Ohio, U. S. A.

Printed September 1939. Protected Distribution.

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## REMARKS

Complete Prescription Prices are established by The Univis Corporation by contracts with wholesale Distributors.

The list has been arranged to facilitate reference without complicating the tables by repetitions of the extra charges for special shapes, etc., in each instance. These are covered in the list on Page 3 under "Special Charges."

Univis Lenses are regularly supplied in white and three shades of Univis Tint—light, medium and dark—known as No. 1, 1½ and No. 2—and also available in Univis-Crookes "A," "B," and "C."

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## Exhibit 6

## FRANCHISE TO PRESCRIBE AND FIT UNIVIS LENSES

This Memorandum of Agreement made and entered into this..... day of..... A. D. 19..... by and between..... Party of the First Part, and hereinafter sometimes referred to as the "Distributor," and..... Party of the Second Part, and hereinafter sometimes referred to as the "Representative"; witnesseth:

Whereas, The Univis Corporation has the sole and exclusive right in the United States and its possessions under certain patents now issued and expected to issue, for the manufacture, use and sale of bifocal eyeglass lenses and blanks; and.....

..... is desirous of being placed on the approved list to prescribe and fit finished Univis lenses embodying one or more of said inventions and the subject matter of the patents covering

said inventions and protected by Federal and State Trademarks; and

Whereas, it is desired by the parties to this Agreement, with the consent and approval of said The Univis Corporation, to engage ----- as "Representative" in the prescribing and fitting of Univis Lenses and products.

Now, therefore, in consideration of the mutual terms, covenants and conditions hereinafter contained, it is agreed by and between the parties hereto, as follows:

The Univis Corporation hereby licenses, upon the nomination of ----- Distributor, -----, as a representative to use and/or prescribe and fit genuine "Univis" lenses in consideration of the following:

First: That the representative will maintain a minimum retail price of Sixteen (16) Dollars per pair for white "Univis" lenses and a minimum retail price of Twenty (20) Dollars per pair for tinted "Univis" lenses in order to insure the high standards of manufacture, use, and sale of this product.

Second: That the representative will only prescribe and fit "Univis" as finished lenses to wearer on the prescription of refractionists, his own refractions and neutralizations, and that no lenses will be prescribed and fit except to the above mentioned patients with whom the representative exclusively and directly transacts his business.

Third: That this license is non-assignable, non-exclusive and revocable at the option of The Univis Corporation.

Fourth: That the trademark "Univis" will be only employed in connection with the use and sale under this license of said lenses; and that the right to use said trademark will terminate with the termination of this license.

Fifth: That the prices herein may be changed from time to time by The Univis Corporation, licensor, by due notice in writing to the licensee.

In witness whereof, the parties hereto have hereunto set their hands and seals on the day and year first above written.

In the presence of:

THE UNIVIS CORPORATION

By -----

President.

Attest -----

Secretary.

Representative.

The foregoing licensed representative is hereby nominated.

The ----- Company, Distributor.

By -----



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*Exhibit 7***INFORMATION REQUIRED REGARDING UNIVIS APPLICANTS**

This information is necessary regarding each applicant for Representative franchise. It is to be sent to The Univis Corporation, Dayton, Ohio, with the applicant's signed contract.

Name of Applicant-----

Address-----

City and State-----

Optometrist, optician, or oculist?-----

Q. Is his establishment exclusively optical—or in connection with a jewelry, drug, or department store?-----

Q. How long in practice in this location?-----

Q. Does he maintain high standards of practice?-----

Q. Does he advertise?-----

If so, does he advertise prices?-----

Or that his prices are lower than average competition?-----

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*Exhibit 8***INSTRUCTIONS RE APPLICATIONS FOR UNIVIS RETAIL FRANCHISE.**

The Univis selective and protective policy requires that licensing be restricted to wholly desirable channels. While the Corporation alone has the power to issue licenses, the Distributor organization has the responsibility of giving accurate confidential information regarding each applicant it nominates. An "Information Blank" is provided for this purpose, to accompany each contract submitted. In the absence of any notation to the contrary it is assumed by the Corporation that the Distributor definitely recommends the applicant. Recommend only those who are unquestionably desirable.

In cases where it would be embarrassing for you to decline the application of an ineligible retailer you can take his contract and let it come through—being sure to state the facts—and the Corporation will take full responsibility for failure to approve. Retailers whose standards and methods are such as are commonly covered in the trade by the term "price-cutters" are not eligible. There is no rule against applicants in connection with department or jewelry stores if their standards and methods are satisfactory in every respect—however when such applicants are presented they should be accompanied by a special explanatory report if approval is desired.

Further, we do not want to add to the license list any dealers who are not "sold" on using Univis. In taking applications, secure

from the dealer his order for the Univis Sample Case of Lenses at \$5.00, which amount is credited to him in full through cooperative arrangement between the Univis Company and Distributor, as soon as he purchases five (5) pairs of Univis.

A contract herewith shows the manner of fill-in. The dealer signs on the line above the word "Representative." The salesman signs as witness on the line opposite. The nomination is signed on behalf of the Distributor by an office executive or Branch Manager. Have the contracts signed in duplicate. Both copies, together with Information Blank and requisition for Sample Case, are sent to The Univis Corporation, Dayton, Ohio. One copy of the contract is returned direct to the licensee, properly executed, when he is notified of his acceptance.

Your cooperation is earnestly solicited in handling applications as above outlined, for mutual interest.

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*Exhibit 9***MEMORANDUM OF AGREEMENT WITH FINISHING LICENSEE**

This Memorandum of Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_, by and between The Univis Corporation, a Delaware corporation, with its principal office and place of business at Wilmington, Delaware, with an office and place of business at Dayton, Ohio, and \_\_\_\_\_ Company, of \_\_\_\_\_, with its principal office and place of business at \_\_\_\_\_, witnesseth:

Whereas, The Univis Corporation has the sole and exclusive right in the United States and its possessions under certain patents now issued and expected to issue, for the manufacture, use and sale of bifocal eyeglass lenses and blanks; and \_\_\_\_\_ Company hereinafter called the "Finishing Licensee" is desirous of being placed upon the approved list to purchase from the approved manufacturing licensees of The Univis Corporation, rough lens blanks embodying one or more of said inventions and the subject matter of the patents covering said inventions and protected by Federal and State Trademarks, and of completing the manufacture thereof according to suitable prescriptions for the use of the purchaser who will wear the resulting bifocal eyeglass lenses;

Whereas, The Univis Corporation is limiting the right to manufacture, use and/or sell to manufacturers of the rough lens blanks of the highest quality on strict specifications; and is limiting the purchasers thereof for further finishing in the complete eyeglass lenses to a select list of licensees, of which the \_\_\_\_\_ Company is desirous of becoming one, for the purpose of main-

taining said quality in the finish and final delivery of the Univis bifocal lenses which are the subject-matter hereof to the ultimate purchaser and wearer;

Now, therefore, in consideration of the mutual promises herein exchanged, and other good and valuable considerations herein-after acknowledged and to be paid pursuant to this contract, the parties hereto agree as follows:

1. License. The Univis Corporation hereby grants under the following patents and applications, the non-exclusive, non-assignable, revocable right to complete the manufacture of Univis bifocal lenses from rough lens blanks purchased only from the authorized manufacturing licensees of The Univis Corporation (of which the \_\_\_\_\_ Company will be advised from time to time) and to sell said finished Univis bifocal lenses made from said blanks only in accordance with the terms and conditions set forth herein and as may be established from time to time pursuant to this contract, under the following patents now owned and patents which may issue to The Univis Corporation in the future, such present patents being the following:

U. S. Letters Patent No. 1,632,208—Dated June 14, 1927—Frank B. Watson and Edward B. Culver.

U. S. Letters Patent No. 1,729,654—Dated October 1, 1929—Frank B. Watson and Edward B. Culver.

U. S. Letters Patent No. 1,160,383—Nov. 16, 1915—Henry Courmettes.

U. S. Application Serial No. 467,196—Filed June 11, 1930—J. R. Silverman.

U. S. Application Serial No. 468,774—Filed July 18, 1930—J. R. Silverman.

U. S. Application Serial No. 490,390—Filed October 22, 1930—J. R. Silverman.

U. S. Application Serial No. 344,302—Filed March 5, 1929—N. M. Stanley.

U. S. Application Serial No. 479,149—Filed Sept. 2, 1930—N. M. Stanley.

U. S. Application Serial No. 321,602—Filed Nov. 24, 1928—Francis J. B. Watson et al.

421 U. S. Application Serial No. 388,911—Filed August 28, 1929—Frank B. Watson et al.

U. S. Application Serial No. 359,470—Filed May 1, 1929—Edward Culver et al.

U. S. Application Serial No. 455,029—Filed May 23, 1930—Edward Culver et al.

U. S. Application Serial No. 455,030—Filed May 23, 1930—Edward Culver et al.

U. S. Application Serial No. 482,235—Filed September 16, 1930—H. A. Toulmin, Jr.

any additional patents issued to or acquired by The Univis Corporation shall be communicated to \_\_\_\_\_ Company from time to time as they issue, and said letter of communication shall be attached hereto and become a part hereof with the same force and effect as if inserted herein at the signing hereof.

2. Restrictions.—It is further agreed between the parties as the essence of this contract that \_\_\_\_\_ Company will sell the Univis bifocal eyeglass lenses which are the subject matter hereof only as finished lenses to the wearer on the prescription of refractionists, his own refractions and neutralizations, and that no lenses will be sold except to the above-mentioned patients with whom the "Finishing Licensee" exclusively and directly transacts his business.

3. Quality.—The "Finishing Licensee" agrees to employ good material and workmanship and conduct the business honorably and skillfully so as to endeavor to make and maintain the reputation for the lenses which are the subject matter of this contract;

4. Consideration.—That the consideration for this contract passing between the parties is the placing of the \_\_\_\_\_ Company by the Univis Corporation upon the approved list to enable the \_\_\_\_\_ Company to purchase rough lens blanks and complete the finishing thereof for customers in accordance with the terms of this contract;

5. Notice.—The "Finishing Licensee" further agrees to notify the corporation of any violation on the part of any licensee of the agreements respectively made by them with the corporation, and to assist the corporation in all possible ways in securing evidence against, and enforcing its agreements with such licensees.

6. Trade-mark.—It is further agreed between the parties that the subject-matter shall only be sold under the name "Univis" and that no other lenses and/or blanks will be sold by the \_\_\_\_\_ Company under the name, "Univis"; and that \_\_\_\_\_ Company will cease to use the name "Univis" upon termination of this contract, and only use the name "Univis" on the subject matter of this contract;

7. Price.—The "Finishing Licensee" further agrees that he will not sell below the minimum retail price of Twenty Dollars (\$20.00) per pair for said white Univis lenses, and Twenty-Five Dollars (\$25.00) per pair for said tinted Univis lenses, as stipulated herein by the Univis Corporation as a consideration for this license to manufacture and sell, and agrees not to take orders or sell any Univis lenses, either directly or indirectly, through rebates or otherwise in any manner as to lower this price; and agrees that no blanks, as blanks, will be sold by him.

8. Rebate.—The \_\_\_\_\_ Company hereby agrees not to give away, sell or offer for sale, either directly or indirectly, semifinished or finished Univis lenses at less than the price stipulated herein, together with discounts and terms as fixed by The Univis Corporation, or as may be modified by it from time to time, and agrees not to attempt to or actually evade the intent and purpose of this contract by the giving of rebates, discounts, concessions, extra merchandise, or by any other means which would vary the actual price at which the subject matter hereof is sold;

9. Quality.—The licensee agrees to employ good material and workmanship in completing the manufacture of Univis bifocal eyeglass lenses and conduct the business honorably and skillfully so as to endeavor to make and maintain the reputation for the lenses which are the subject-matter of this contract.

10. Term.—It is further agreed and understood between the parties that this agreement and license shall remain in full force and effect for a period of \_\_\_\_\_ years; and shall be sub-

422 ject to renewal from time to time provided the terms and conditions hereof have been fully kept by the \_\_\_\_\_

Company; and it is further agreed that in the event that the \_\_\_\_\_ Company violates any provision hereof, The Univis Corporation shall have the right to forthwith, upon notice in writing to the \_\_\_\_\_ Company, cancel this contract, to remove the \_\_\_\_\_ Company from its approved list, to notify all concerned of this action, and to notify the public, if necessary, that the \_\_\_\_\_ Company is no longer a licensee of The Univis Corporation.

THE UNIVIS CORPORATION,

Witness:

\_\_\_\_\_

\_\_\_\_\_  
President.

\_\_\_\_\_

\_\_\_\_\_  
Secretary.

Witness:

\_\_\_\_\_

\_\_\_\_\_  
President.

\_\_\_\_\_

\_\_\_\_\_  
Secretary.

### UNIVIS FAIR TRADE AGREEMENT WITH WHOLESALER

This agreement made at Dayton, Ohio, on the 5th day of April 1940, by and between The Univis Lens Company, hereinafter called the "Manufacturer," and Hygrade Optical Co., Inc., of



the City of New York and State of New York, hereinafter called the "Wholesaler"; witnesseth:

Whereas, the Manufacturer is engaged in the production and distribution of eyeglass lenses which bear, or the label or content of which bears, and which are advertised, distributed, and sold under the trade-marks, brands, or names of the Manufacturer who is the owner thereof and particularly under the trade-mark "Univis," and which eyeglass lenses are in fair and open competition with the lenses of the same general class produced by others;

Whereas, the Manufacturer has invested large sums of money in research, engineering, advanced manufacturing mechanisms and methods, and elaborate and expensive inspection systems for the maintenance of the quality of said lenses manufactured and sold under the trade-mark "Univis";

Whereas, the Wholesaler is also a manufacturer in that further manufacturing steps are taken by said Wholesaler under the supervision of the Manufacturer in creating said lenses supplied by the Manufacturer as blanks in order to conform said blanks to prescriptions of the ultimate wearers of said eyeglass lenses, and it is essential that the quality of the lens blanks so manufactured by the Manufacturer be continued by the subsequent manufacturing operations of the Wholesaler and that said trade-marks, brands and names of the Manufacturer, and particularly the trade-mark "Univis" and the straight top of insert be continued to identify the lenses ground from the lens blanks of the Manufacturer;

Whereas, said trade-marks, brands, and names, and particularly the trade-mark "Univis" and said shapes of insert with a straight top constitute a valuable part of the goodwill of the business of the Manufacturer and are of great importance in the handling, selling, and distribution of said eyeglass lenses because enabling the public to identify said eyeglass lenses of the Manufacturer and Wholesaler as being the product of the scientific research, manufacturing skill, inspection, and standards of workmanship of the Manufacturer and the Wholesaler;

Whereas, the Government of the United States has enacted the Miller-Tydings Act, known as the Fair Trade Practice Act and the State of New York has also enacted a Fair Trade Practice Act, and said Manufacturer and Wholesaler desire to avail themselves and the public of the benefits of said Acts and to avoid having the eyeglass lenses which are the subject of this contract made the subject of injurious and uneconomic practices and avoid depreciation of and damage to the trade-marks, brands, and names of the Manufacturer and particularly the trade-mark "Univis" and the identifying mark of a straight top insert through such practices, and to avoid the deception and imposition and defrauding of the public by the purchase and use of inferior eyeglass lenses which will be detrimental to the eyesight of the public;

Whereas, the Wholesaler is also engaged in the sale of said eyeglass lenses under the trade-mark "Univis" with a straight top insert as supplied to it by the Manufacturer in the said State of New York and said eyeglass lenses so sold, handled, and dealt in are eyeglass lenses of the same general type dealt in by others and which are in fair, active, and open competition with said eyeglass lenses; and

Whereas contracts similar hereto are being executed between the Manufacturer and other Wholesalers in the same and other States having similar laws;

Now, therefore, in consideration of the premises and of the agreements herein and the benefits contemplated hereby, and also in consideration of such sales and deliveries of said eyeglass lenses as the Manufacturer may make or cause to be made to the Wholesaler, under said Trade-Marks, from time to time while this agreement shall be in effect and the purchase thereof by the Wholesaler, the parties hereto agree as follows:

1. The Wholesaler will not, either directly or indirectly, advertise, offer for sale, or sell to any person, firm, or corporation any of such eyeglass lenses at less than the minimum resale prices then in effect for such commodities as established hereunder from time to time by the Manufacturer. The minimum resale prices for finished lenses now in effect and hereby established by the Manufacturer, with which the Wholesaler agrees to comply, are set forth in the attached Schedule "A," which Schedule may be modified from time to time by the Manufacturer upon due notice to the Wholesaler, and said Wholesaler agrees to so comply therewith. The Wholesaler shall have the right to grind the blanks according to prescription furnished to it by the "Retail Licensees" and to sell the finished lenses on the schedule of prices hereinbefore referred to, or as may be modified from time to time. The Wholesaler shall also have the right to sell blanks to licensed "Finishing Retailers" according to the schedule of prices set forth in attached Schedule "B."

2. The Manufacturer may at any time and from time to time, by notice given as hereinafter provided, add to the eyeglass lenses specified under this agreement other eyeglass lenses of "Univis" quality which bear said trade-mark "Univis." All eyeglass lenses so added shall hereafter be included in the meaning of the word "eyeglasses."

In the event that the Manufacturer shall stipulate a resale price with respect to any agreement similar to this one which shall be different from the resale price at the time in effect hereunder, then Manufacturer shall notify the Wholesaler of that fact, and such

different resale price shall become effective hereunder ten (10) days after such notice shall be given.

3. The Manufacturer agrees to supply said Wholesaler with printed guarantees, directions, and charts, uniform with those furnished other wholesalers, for the correct and accurate finishing of said lens blanks to meet the requirements of the prescription for the users so that the finished lenses will not be defective nor detrimental to the user's eyes; and the Wholesaler agrees to follow said directions and charts with reasonable care and skill in finishing said lens blanks; and the Wholesaler agrees to permit duly authorized representatives of the Manufacturer, at any time during business hours, to inspect its equipment and operations in finishing said blanks and also the finished lenses on hand, and to adopt all reasonable suggestions given by said representatives of the Manufacturer for improving the equipment and/or finishing process and the quality of the finished lens. The Wholesaler shall issue with lenses or blanks sold hereunder The Univis Guarantee Certificate.

4. The Manufacturer agrees to provide technical service and instructions adequate in its judgment and technical supervision of the operations of the Wholesaler on the eyeglass blanks furnished hereunder; and the Wholesaler agrees to conform thereto in order that requisite standards of quality of the eyeglass lenses under the trade-marks of the Manufacturer shall be maintained.

5. It is agreed by the parties that the giving by the Wholesaler of any article of value in connection with the sale of any of the eyeglass lenses covered hereby, or the making of any concession in connection with the sale of any of the eyeglass lenses covered hereby shall constitute a sale by the Wholesaler of said eyeglass lenses at prices less than the prices at the time in effect under this agreement. It is further agreed by the parties hereto that the sale by the Wholesaler of any of the eyeglass lenses in combination with any other commodity at a price for the combination which shall be less than the minimum resale price at the time in effect hereunder of the eyeglass lenses so sold, plus the minimum resale price of such other commodity, or, if no such price shall be in force in respect of such other commodity, then plus the cost of such other commodity and a reasonable profit thereon, shall constitute a sale by the Wholesaler of such eyeglass lenses at a price less than the price at the time in effect under this agreement.

6. This contract may be cancelled by either party hereto on ten (10) days' notice in writing to the other.

7. The Wholesaler agrees to sell only to those retailers on the approved list of licensees as furnished by the Manufacturer to the Wholesaler and as modified by the Manufacturer from time to time.

8. The parties hereto recognize and agree that it is impossible to determine the actual damage which will result to the Manufacturer from sales made by the Wholesaler in contravention of the terms of this agreement and they therefore agree that the Wholesaler shall pay to the Manufacturer as liquidated damages the sum of One Hundred Dollars (\$100.00) for each sale made by the Wholesaler in violation of any provisions of this agreement. If and as often as, the Manufacturer shall institute any proceedings or action in any court against the Wholesaler for any breach of this agreement, the Wholesaler agrees, in addition to all court costs, to pay the Manufacturer a reasonable attorney's fee. It is further agreed that in addition to other legal rights and remedies the Manufacturer shall be entitled to injunctive relief against any and all actual or threatened breaches of this agreement.

9. It is the agreement and intention of the parties hereto that, if any provision or part of this agreement shall be held invalid, the remainder of this agreement shall nevertheless be deemed valid and binding upon the parties hereto. No changes in this printed form of contract shall be binding, except to the extent that the blanks herein shall be filled in order to make the agreement complete and operative.

10. The eyeglass lenses may be resold by the Wholesaler without reference to this agreement in the following cases:

(a) In closing out the owner's stock for the purpose of discontinuing delivering any such commodity.

(b) When the goods are damaged or determined or deteriorated in quality and notice is given to the public thereof.

(c) By any officer acting under the orders of any court.

At the election of the Manufacturer, the Wholesaler agrees, in the event of thirty (30) days' notice in writing to the Manufacturer of the Wholesaler's intent to take advantage of any one of the foregoing conditions in this paragraph, that the Manufacturer shall be given the opportunity to purchase said stock at the original invoice price to said Wholesaler and shall have this opportunity of purchase for at least ten (10) days before said stock is otherwise offered for sale hereunder.

In witness whereof the parties hereto have caused this Agreement to be duly executed, the day and year first above written.

THE UNIVIS LENS COMPANY,  
By J. R. SILVERMAN, *President*.

Witness:

H. MINHAM.

HYGRADE OPTICAL CO., INC.,  
"Wholesaler"

By AARON KLEIN, *Pres.*

Witness:

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## Complete Multi-Focal Service

## UNIVIS PRESCRIPTION PRICE LIST

Issued by The Univis Corporation, Dayton, Ohio, U. S. A.  
Printed September 1939. Protected distribution.

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## REMARKS

Complete Prescription Prices are established by The Univis Corporation by contracts with wholesale Distributors.

The list has been arranged to facilitate reference without complicating the tables by repetitions of the extra charges for special shapes, etc., in each instance. These are covered in the list on Page 3 under "Special Charges."

Univis Lenses are regularly supplied in white and three shades of Univis Tint—light, medium, and dark—known as No. 1, 1½, and No. 2—and also available in Univis-Crookes "A," "B," and "C."

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Schedule "B"—(Univis Fair Trade Agreement with Wholesaler).

## SCHEDULE OF PRICES TO "A" FINISHING RETAILERS

(Effective October 1st, 1939)

(Prices are quoted for blanks with Additions +0.50 to +4.00 inclusive)

Style Blanks:	Net per pair	
	White	Tinted
B & D, bases 4.25v, 6.25v, 7.25v, 8.25v, 10.25v (rough).....	\$4.00	\$5.75
B & D bases 4.25v, 6.25v, 7.25v, 8.25v, 10.25v (semi-finished).....	4.65	6.40
R (regular) bases 4.25v, 6.25v, 7.25v, 8.25v, 10.25 (rough).....	4.35	6.15
R (regular) bases 4.25v, 6.25v, 7.25v, 8.25v, 10.25v (semi-finished).....	5.00	6.75
R (regular to finish over 24 mm segs) bases as above (rough).....	4.85	6.60
R—Compensated bases as above (semi-finished).....	5.50	7.25
R—Prism—Seg. 20 mm seg, to 1.5Δ inclusive (semifinished).....	7.25	9.00
R—Prism—Seg. 20 mm seg, 1.75Δ to 2.0Δ (semifinished).....	8.25	10.00
R—Prism—Seg. over 2.0Δ on special order (semifinished).....	8.25	10.00



	White Net per pair	Tinted Net per pair
Trifocals (Regular round-top intermediate) (rough)-----	\$6.50	\$8.25
Trifocals (Regular round-top intermediate) (semifinished)-----	7.25	9.00
Trifocals (Straight-top intermediate) (rough)-----	7.35	9.10
Trifocals (Straight-top intermediate) (semifinished)-----	8.10	9.85
Double-Segment Trifocals (segs top & bottom) (semifinished)-----	10.00	11.75
Circular-Prism-18 mm-Seg blanks, 1Δ, 1.5Δ, 2Δ (semi- finished)-----	7.25	9.00
Circular-Prism-16 mm-Seg blanks, 2.5Δ & 3.0Δ (semi- finished)-----	8.75	10.50
Cataract Single-Vision, (semifinished only)-----	13.00	15.00
Cataract bifocals, (semifinished only)-----	21.00	23.00
Trifield negative, (semifinished only)-----	10.75	12.50
Minus segments (White only) (semifinished only)-----	9.75	
Additional charges for:		Per pair
Plano and 2.00 base blanks-----	extra	\$1.50
12.00 and 13.00 base blanks-----	do	1.00
13.50 base and up-----	do	1.50
60 mm blanks-----	do	2.50
blanks over 6 mm thick-----	do	1.50
special fusing blanks-----	do	1.50
special reading additions-----	do	1.00
bicentric (slab-off) grinding-----	per lens	2.00

<sup>1</sup> Straight-top trifocals, circular-prism segs made in Univis Crookes A.

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*Exhibit 11*

## THE UNIVIS LENS COMPANY

DAYTON, OHIO

Along with the new Univis Fair Trade Agreement, which we are sending for your signature, are enclosed copies of the Agreement and letter sent to your retailer licensees—as well as a copy of the explanatory letter sent to your own salesmen.

As you understand, this new agreement is in addition to our present contract and is based on the Tydings-Miller and various State Fair Trade Acts. Its more obvious advantage is the added protection it affords you, your licensed retailers, and *and* The Univis Lens Company, in the profitable sale and manufacture of Univis lenses.

It is our firm belief that the protective features of the Univis Fair Trade Agreement will be mutually helpful. The “non-signer” clause of the Fair Trade Acts will also enable us to make the provisions of the agreement binding on all—licensees or not—once an agreement has been signed by any licensee in a state.

These Fair Trade Agreements do not apply to the District of Columbia, nor the states of Delaware, Missouri, Texas and Vermont, which have not yet enacted similar laws, and we are not sending this form of Agreement to the Univis licensees in those states at this time.

We ask your cooperation in making these protective measures effective.

Please read, sign and return your agreement as quickly as possible, and urge your retail licensees to do the same. It would be very helpful, in speeding up the return of retail agreements, if you instructed your salesmen to check over this matter with each of their customers.

Yours very truly,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN,

JRS:KE.

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*Exhibit 12*

#### UNIVIS FAIR TRADE AGREEMENT WITH FINISHING RETAILER

This agreement, made at Dayton, Ohio, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between The Univis Lens Company, hereinafter called the "Manufacturer," and \_\_\_\_\_ of the City of \_\_\_\_\_ and State of \_\_\_\_\_, hereinafter called the "Finishing-Retailer"; witnesseth:

Whereas, the Manufacturer is engaged in the production and distribution of eyeglass lenses which bear, or the label or content of which bears, and which are advertised, distributed and sold under the trade-marks, brands or names of the Manufacturer who is the owner thereof and particularly under the trade-mark "Univis," and which eyeglass lenses are in fair and open competition with the lenses of the same general class produced by others;

Whereas, the Manufacturer has invested large sums of money in research, engineering, advanced manufacturing mechanisms and methods, and elaborate and expensive inspection systems for the maintenance of the quality of said lenses manufactured and sold under the trade-mark "Univis";

Whereas, the Finishing-Retailer is also a manufacturer in that further manufacturing steps are taken by said Finishing-Retailer under the supervision of the Manufacturer in finishing said blanks supplied by the Manufacturer in order to conform said blanks to the prescriptions of the ultimate wearers of said eyeglass lenses; and it is essential that the quality of the lens blanks so manufactured by the Manufacturer be continued by the subsequent manufacturing operations of the Finishing-Retailer; and that said trade-marks brands and names of the Manufacturer, and partic-

ularly the trade-mark "Univis" and the straight top of insert be continued to identify the lenses ground from the lens blanks of the Manufacturer; and said Finishing-Retailer sells the finished lenses to the wearers of lenses at retail;

Whereas, said trade-marks, brands and names, and particularly the trade-mark "Univis" and said shapes of insert with a straight top constitute a valuable part of the goodwill of the business of the Manufacturer and are of great importance in the handling, selling and distribution of said eyeglass lenses because enabling the public to identify said eyeglass lenses of the Manufacturer and Finishing-Retailer as being the product of the scientific research manufacturing skill, inspection and standards of workmanship of the Manufacturer and the Finishing-Retailer;

Whereas, the Government of the United States has enacted the Miller-Tydings Act, known as the "Fair Trade Practice Act"; and said Manufacturer and Finishing-Retailer desire to avail themselves of the benefits of said Acts and to avoid having the eyeglass lenses which are the subject of this contract made the subject of detrimental and uneconomic practices and to avoid depreciation of and damage to the trade-marks, brands and names of the Manufacturer and particularly the trade-mark "Univis" and the identifying mark of a straight top insert through such practices, and to avoid the deception and imposition and defrauding of the public by the purchase and use of inferior eyeglass lenses which will be detrimental to the eyesight of the public;

Whereas, the Finishing-Retailer is also engaged in the sale of said eyeglass lenses under the trade-mark "Univis" with a straight top insert as supplied to it by the Manufacturer or Wholesaler in the said State of \_\_\_\_\_ and said eyeglass lenses so sold, handled and dealt in are eyeglass lenses of the same general type dealt in by others and which are in fair, active and open competition with said eyeglass lenses; and

436 Whereas contracts similar hereto are being executed between the Manufacturer and other Finishing-Retailers in the same and other States having similar laws;

Now, therefore, in consideration of the premises and of the agreements herein and the benefits contemplated hereby, and also in consideration of such sales and deliveries of said eyeglass lenses as the Manufacturer may make or cause to be made to the Finishing-Retailer, under said trade-marks, from time to time while this agreement shall be in effect and the purchase thereof by the Finishing-Retailer, the parties hereto agree as follows:

1. The Finishing-Retailer will not, either directly or indirectly, advertise, offer for sale, or sell to any person, firm, or corporation, any of such eyeglass lenses at less than the minimum resale prices then in effect for such commodities as established hereunder from

time to time by the Manufacturer. The minimum resale prices for finished lenses now in effect and hereby established by the Manufacturer, with which the Finishing-Retailer agrees to comply, are set forth in the attached Schedule "A," which Schedule may be modified from time to time by the Manufacturer upon due notice to the Finishing-Retailer, and said Finishing-Retailer agrees to so comply therewith.

2. The Manufacturer may at any time and from time to time, by notice given as hereinafter provided, add to the eyeglass lenses specified under this agreement other eyeglass lenses of "Univis" quality which bear said trade-mark "Univis." All eyeglass lenses so added shall hereafter be included in the meaning of the word "eyeglasses."

In the event that the Manufacturer shall stipulate a resale price with respect to any agreement similar to this one which shall be different from the resale price at the time in effect hereunder, then the Manufacturer shall notify the Finishing-Retailer of that fact, and such different resale price shall become effective hereunder ten (10) days after such notice shall be given.

3. The Manufacturer agrees to supply said Finishing-Retailer with printed guarantees, directions, and charts, uniform with those furnished other finishing-retailers, for the correct and accurate finishing of said lens blanks to meet the requirements of the prescriptions for the users so that the finished lenses will not be defective or detrimental to the user's eyes and will be correctly used and the Finishing-Retailer agrees to follow said directions and charts with reasonable care and skill in finishing said lens blanks.

4. The Manufacturer agrees to provide technical service and instructions adequate in its judgment and technical supervision of the operations of the Finishing-Retailer on the eyeglass blanks furnished hereunder; and the Finishing-Retailer agrees to conform thereto in order that requisite standards of quality of the eyeglass lenses under the trade-marks of the Manufacturer shall be maintained.

5. It is agreed by the parties that the giving by the Finishing-Retailer of any article of value in connection with the sale of any of the eyeglass lenses covered hereby, or the making of any concession in connection with the sale of any of the eyeglass lenses covered hereby shall constitute a sale by the Finishing-Retailer of said eyeglass lenses at prices less than the prices at the time in effect under this agreement. It is further agreed by the parties hereto that the sale by the Finishing-Retailer of any of the eyeglass lenses in combination with any other commodity at a price for the combination which shall be less than the minimum resale price at the time in effect hereunder of the eyeglass lenses so sold,



plus the minimum resale price of such other commodity, or, if no such price shall be in force in respect of such other commodity, then plus the cost of such other commodity and a reasonable profit thereon, shall constitute a sale by the Finishing-Retailer of such eyeglass lenses at a price less than the price at the time in effect under this agreement.

6. This contract may be cancelled by either party hereto on ten (10) days' notice in writing to the other.

7. The Finishing-Retailer agrees that it will sell only to its bona fide customers who themselves are to be the wearers of the eyeglass lenses so finished by grinding to the prescription of the wearer by the Finishing-Retailer; and that said lenses will be sold at not less than the minimum resale prices set forth on Schedule "A" attached hereto.

8. The parties hereto recognize and agree that it is impossible to determine the actual damage which will result to the Manufacturer from sales made by the Finishing-Retailer in contravention of the terms of this agreement, and they therefore agree that the Finishing-Retailer shall pay to the Manufacturer as liquidated damages the sum of One Hundred Dollars (\$100.00) for each sale made by the Finishing-Retailer in violation of any provisions of this agreement. If and as often as the Manufacturer shall institute any proceedings or action in any court against the Finishing-Retailer for any breach of this agreement, the Finishing-Retailer agrees, in addition to all court costs, to pay the Manufacturer a reasonable attorney's fee. It is further agreed that in addition to other legal rights and remedies the Manufacturer shall be entitled to injunctive relief against any and all actual or threatened breaches of this agreement. This contract is made under and shall be interpreted and construed solely in accordance with the laws of the State of -----.

9. It is the agreement and intention of the parties hereto that, if any provision or part of this agreement shall be held invalid, the remainder of this agreement shall nevertheless be deemed valid and binding upon the parties hereto. No changes in this printed form of contract shall be binding, except to the extent that the blanks herein shall be filled in, order to make the agreement complete and operative.

10. The eyeglass lenses may be resold by the Finishing-Retailer without reference to this agreement in the following cases:

(a) In closing out the owner's stock for the purpose of discontinuing delivering any such commodity.

(b) When the goods are damaged or determined or deteriorated in quality and notice is given to the public thereof.

(c) By any officer acting under the orders of any court.

At the election of the Manufacturer the Finishing-Retailer agrees, in the event of thirty (30) days' notice in writing to the



Manufacturer of the Finishing-Retailer's intent to take advantage of any one of the foregoing conditions in this paragraph, that the Manufacturer shall be given the opportunity to purchase said stock at the original invoice price to said Finishing-Retailer and shall have this opportunity of purchase for at least ten (10) days before said stock is otherwise offered for sale hereunder.

In witness whereof the parties hereto have caused this agreement to be duly executed the day and year first above written.

Witness: \_\_\_\_\_ THE UNIVIS LENS COMPANY.

By \_\_\_\_\_

Witness: \_\_\_\_\_ "Finishing-Retailer."

By \_\_\_\_\_

SCHEDULE "A"—(UNIVIS FAIR TRADE AGREEMENT) STIPULATED  
MINIMUM PRICES

March 1940

(Prices listed below are for white lenses per pair—Add \$4.00 per pair for tinted lenses)

Styles B and D	\$16.00	Circular Prism Segment	\$22.00
Style R	17.00	Trifocal, regular	21.00
Compensated	19.00	Trifocal, straight-top	23.00
Bicentric Prism	20.00	Double D	27.00
(Add to above for distance power)		Trifield Negative	30.00
3.25 d. to 7.00 d	\$3.00	Single Vision Cataract	
Power over 7.00 d	6.00		\$35.00 to 40.00
R Prism Segment		Cataract Bifocals (Fused	
up to $1\frac{1}{2}\Delta$	23.00	or Bilettic)	\$50.00 to 60.00
over $1\frac{1}{2}\Delta$	26.00		

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Exhibit 13

438 UNIVIS FAIR TRADE AGREEMENT WITH RETAILER

This Agreement, made at Dayton, Ohio, on the 23d day of April, 1940, by and between The Univis Lens Company, hereinafter called the "Manufacturer," and Courmettes & Gaul, Inc., of the City of New York and State of New York, hereinafter called the "Retailer";

Whereas, the Manufacturer is engaged in the production and distribution of eyeglass lenses which bear, or the label or content of which bears, and which are advertised, distributed and sold under the trade-marks, brands or names of the Manufacturer who is the owner thereof and particularly under the trade-mark "Univis," and which eyeglass lenses are in fair and open competition with the lenses of the same general class produced by others; witnesseth:

Whereas, the Manufacturer has invested large sums of money in research, engineering, advanced manufacturing mechanisms and methods, and elaborate and expensive inspection systems for the maintenance of the quality of said lenses manufactured and sold under the trade-mark "Univis";

Whereas, the Retailer prescribes, adjusts and fits eyeglass lenses to the eyes of its customers who wear the lenses and the Retailer purchases its lenses under the trade-mark "Univis" from the Manufacturer's designated wholesalers authorized to grind said lenses under the trade-mark "Univis" for the Retailer;

Whereas, said trade-marks, brands and names, and particularly the trade-mark "Univis" and said shapes of insert with a straight top constitute a valuable part of the goodwill of the business of the Manufacturer and are of great importance in the handling, selling and distribution of said eyeglass lenses because enabling the public to identify said eyeglass lenses of the Manufacturer and Retailer as being the product of the scientific research, manufacturing skill, inspection and standards of workmanship of the Manufacturer and the Retailer;

Whereas, the Government of the United States has enacted the Miller-Tydings Act, known as the Fair Trade Practice Act and the State of New York has also enacted a Fair Trade Practice Act, and said Manufacturer and Retailer desire to avail themselves and the public of the benefits of said Acts and to avoid having the eyeglass lenses which are the subject of this contract made the subject of detrimental and uneconomic practices and to avoid depreciation of and damage to the trade-marks, brands and names of the Manufacturer and particularly the trade-mark "Univis" and the identifying mark of a straight top insert through such practices, and to avoid the deception and imposition and defrauding of the public by the purchase and use of inferior eyeglass lenses which will be detrimental to the eyesight of the public;

Whereas, the Retailer is also engaged in the sale of said eyeglass lenses under the trade-mark "Univis" with a straight top insert as supplied to it by the Manufacturer in the said State of New York and said eyeglass lenses so sold, handled, and dealt in are eyeglass lenses of the same general type dealt in by others and which are in fair, active and open competition with said eyeglass lenses; and

Whereas, contracts similar hereto are being executed between the Manufacturer and other Retailers in the same and other States having similar laws;

Now, therefore, in consideration of the premises and of the agreements herein and the benefits contemplated hereby, and also in consideration of such sales and deliveries of said eyeglass lenses as the Manufacturer may make or cause to be made to the Retailer, under said trade-marks, from time to time

while this agreement shall be in effect and the purchase thereof by the Retailer, the parties hereto agree as follows:

1. The Retailer will not, either directly or indirectly, advertise, offer for sale or sell to any person, firm or corporation, any of such eyeglass lenses at less than the minimum resale prices then in effect for such commodities as established hereunder from time to time by the Manufacturer. The minimum resale prices for finished lenses now in effect and hereby established by the Manufacturer, with which the Retailer agrees to comply, are set forth in the attached Schedule "A," which Schedule may be modified from time to time by the Manufacturer upon due notice to the Retailer, and said Retailer agrees to so comply therewith.

2. The Manufacturer may at any time and from time to time, by notice given as hereinafter provided, add to the eyeglass lenses specified under this agreement other eyeglass lenses of "Univis" quality which bear said trade-mark "Univis." All eyeglass lenses so added shall hereafter be included in the meaning of the word "Eyeglasses."

In the event that the Manufacturer shall stipulate a resale price with respect to any agreement similar to this one which shall be different from the resale price at the time in effect hereunder, then Manufacturer shall notify the Retailer of that fact and such different resale price shall become effective hereunder ten (10) days after such notice shall be given.

3. The Manufacturer agrees to supply said Retailer with printed guarantees, directions and charts, uniform with those furnished other retailers, for the correct and accurate fitting of said lenses to meet the requirements of the prescriptions for the users so that the fitted lenses will not be defective or detrimental to the user's eyes; and the Retailer agrees to follow said directions and charts with reasonable care and professional skill in fitting said lenses.

4. The Manufacturer agrees to provide technical service and instructions adequate in its judgment and technical supervision of the operations of the Retailer on the eyeglass lenses furnished hereunder; and the Retailer agrees to conform thereto in order that requisite standards of quality of the eyeglass lenses under the trade-marks of the Manufacturer shall be maintained.

5. It is agreed by the parties that the giving by the Retailer of any article of value in connection with the sale of any of the eyeglass lenses covered hereby, or the making of any concession in connection with the sale of any of the eyeglass lenses covered hereby shall constitute a sale by the Retailer of said eyeglass lenses at prices less than the prices at the time in effect under this agreement. It is further agreed by the parties hereto that the sale by the Retailer of any of the eyeglass lenses in combination with any other commodity at a price for the combina-

tion which shall be less than the minimum resale price at the time in effect hereunder of the eyeglass lenses so sold, plus the minimum resale price of such other commodity, or, if no such price shall be in force in respect of such other commodity, then plus the cost of such other commodity and a reasonable profit thereon, shall constitute a sale by the Retailer of such eyeglass lenses at a price less than the price at the time in effect under this agreement.

6. This contract may be cancelled by either party hereto on ten (10) days' notice in writing to the other.

7. The Retailer agrees that it will sell only to its bona fide customers who themselves are to be wearers of the eyeglass lenses; and that said lenses will be sold at not less than the minimum resale prices set forth on Schedule "A" attached hereto.

8. The parties hereto recognize and agree that it is impossible to determine the actual damage which will result to the Manufacturer from sales made by the Retailer in contravention of the terms of this agreement and they therefore agree that the Retailer shall pay to the Manufacturer as liquidated damages, the sum of One Hundred Dollars (\$100.00) for each sale made by the Retailer in  
440 violation of any provisions of this agreement. If and as

often as, the Manufacturer shall institute any proceedings or action in any court against the Retailer for any breach of this agreement, the Retailer agrees, in addition to all court costs, to pay the Manufacturer a reasonable attorney's fee. It is further agreed that in addition to other legal rights and remedies, the Manufacturer shall be entitled to injunctive relief against any and all actual or threatened breaches of this agreement. This contract is made under and shall be interpreted and construed solely in accordance with the laws of the State of New York.

9. It is the agreement and intention of the parties hereto that, if any provision or part of this agreement shall be held invalid, the remainder of this agreement shall nevertheless be deemed valid and binding upon the parties hereto. No changes in this printed form of contract shall be binding, except to the extent that the blanks herein shall be filled in order to make the agreement complete and operative.

10. The eyeglass lenses may be resold by the Retailer without reference to this agreement in the following cases:

(a) In closing out the owner's stock for the purpose of discontinuing delivering any such commodity.

(b) When the goods are damaged or determined or deteriorated in quality and notice is given to the public thereof.

(c) By any officer acting under the orders of any court.

At the election of the Manufacturer, the Retailer agrees in the event of thirty (30) days' notice in writing to the Manufacturer of the Retailer's intent to take advantage of any one of the fore-



going conditions in this paragraph, that the Manufacturer shall be given the opportunity to purchase said stock at the original invoice price to said Retailer and shall have this opportunity of purchase for at least ten (10) days before said stock is otherwise offered for sale hereunder.

In witness whereof, the parties hereto have caused this Agreement to be duly executed, the day and year first above written.

THE UNIVIS LENS COMPANY,  
By N. M. STANLEY.

-----  
"Retailer".

By -----

Witness:

A. MULLIK.

Witness:  
-----

441

*Exhibit 14*

442

THE UNIVIS LENS COMPANY,  
*Dayton, Ohio, April 23, 1940.*

COURMETTES & GAUL, INC.,  
*New York, N. Y.*

GENTLEMEN: During the thirteen years of its existence, it has been the steadfast policy of The Univis Lens Company to provide its licensees with every possible form of protection. This we have accomplished in three ways:

First, by selling only first quality lenses.

Second, by establishing a minimum resale price for Univis lenses.

Third, by a careful selection of licensees. As a result of this policy, you have been enabled, as a Univis licensee, to serve your clientele with the highest quality multifocal lenses at a price that assures you a reasonable return on your investment of skill.

Univis has guaranteed this protection by a strict adherence to a "one quality" and "one price" policy—selling no "seconds" or "thirds" . . . making no price concessions to one licensee that were not made to all. In addition, the Company has invested large sums of money in research, engineering; and advanced manufacturing methods. It has set up elaborate and expensive inspection systems for the maintenance and advancement of the high quality of all lenses made and sold under the trade-mark "Univis."

Now, in view of recent Federal and State legislation, certain additional safeguards for quality manufacturing and distribution have been made available. In your interest and ours, we



deem it advisable to use these safeguards. Without changing the basic Univis licensing structure, we propose to supplement the present license with a Fair Trade Agreement based on the Tydings-Miller Act and the Fair Trade Acts of the various States. The supplementary Univis Fair Trade Agreement is enclosed with this letter.

Briefly summarized, this agreement offers you these distinct advantages: You are protected under Federal and State laws against cut-rate, unethical competition. You are assured that no competitor can offer Univis lenses at any price unless he is licensed by the Company. You are reassured that no licensee, under these new agreements, can offer Univis lenses at less than the established minimum resale price. You are further reassured there will be no let-down in the exacting qualifications required to obtain the Univis Franchise.

443 It is important to note that all the Fair Trade Acts contain what is known as a "nonsigner" provision. This clause makes the minimum resale price automatically binding on all in a State, once the agreement has been signed by any retailer in that State. Thus, should anyone, not a Univis licensee, come into possession of Univis lenses through some roundabout manner, he, too, would be bound to sell at the established minimum price or be subject to prosecution under the law.

For your own protection, we strongly urge you to read, sign and return this supplementary Univis Fair Trade Agreement as quickly as possible. By doing so, your position as a Univis licensee will be made ever more secure, through the additional safeguards which supplement and strengthen the protection provided by your present contract.

Sincerely yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN,

*President.*

P.S.—Please mail one copy of the signed agreement to us, and retain the other for your files. A stamped return envelope is enclosed for your convenience.

444

*Exhibit 15*

APRIL 25, 1938.

MR. JAMES H. OLDS,

*Ft. Wayne Optical Company,  
Cooper Building, Ft. Wayne, Ind.*

DEAR JIM: Appreciate your letter of the 23rd in behalf of Dr. S. W. Fouts. There is very little to be said beyond what has already been pointed out regarding Dr. Fouts as a Univis Licensee. I know you realize Jim, that the purpose of a restricted and con-

trolled policy is to establish an identified, protected proposition for the better element thereby giving them a real incentive to support that proposition.

We have during the past eleven years literally turned down more business than we have accepted. This is especially true in cases of large chain stores who would obviously get the contract prices for Univis but who do not generally maintain standards of practice making them eligible for Univis. Even though Dr. Fouts has definitely cut prices on other merchandise we doubt whether we would have cancelled his license had he had a better record on Univis usage. In other words we would have attempted to use the influence of Univis to try to elevate his other price standards.

It is rather strange but nevertheless true that Dr. Fouts, like all of us, seldom appreciate things which come to us easily and which we have until they are taken away. During six years Dr. Fouts has used a total of  $16\frac{1}{2}$  pairs of Univis which certainly is not an indication that he valued his license very highly. Just what is there to indicate that he would be extremely active if placed on the list again? In other words what minimum guarantee could you secure? There may be a basis for reconsideration if we can have some positive assurance of his activity.

Regards.

Very truly yours,

THE UNIVIS LENS COMPANY.

cc--Roy Marks.

JRS:R.

445

Exhibit 16

MAY 26, 1938.

Dr. E. W. SEELEY,

107½ Main Street,

Manchester, Iowa.

DEAR DR. SEELEY: We thank you for writing us at length in your letter of the 20th. It is the purpose of the Univis licensing policy to provide the most complete, most practical and finest quality bifocal service in the optical industry. It is further our desire to confine this service to a select group of optometrists who appreciate the value of this service.

You see Doctor, we only license about 20% of the registered men and for that reason almost 80% of a Univis licensee's competition is automatically eliminated and he is constantly assured of controlled legitimate profit on each pair of Univis prescribed.

In order to justify this restricted policy we must naturally receive support from those licensed. If as in your case, you have not seen fit to prescribe Univis, our license has been of no value to you and we therefore feel we should cancel it and make room for some other licensee who might feel more kindly toward the use of Univis. We think you will agree that rather than this being a "childish attitude" it is a sound business logic.

Before signing off however, we should like to point out one very glaring weakness in your method of operation that we believe you should correct. You state that you give your patients the bifocal with the shape that they prefer. We hardly think this is the basis upon which to establish a professional practise. Surely you as a competent professional man should prescribe the lenses that you think and know are best for your patient and allow the patient only to choose the style of frame or mounting desired. I hardly think I would make a second trip to a doctor who allowed me to choose the type of medicine I wanted to correct my ailment. We offer this thought to you Doctor, as constructive criticism and in a friendly spirit. We hope at some future time if you see the value of Univis bifocals to your practise and your patients and you express a willingness to regularly use them, we may again have the pleasure of considering a reinstatement of your license.

Very truly yours,

THE UNIVIS LENS COMPANY.

JRS:R.

446

*Exhibit 17*

SEPTEMBER 1, 1938.

EDWARD WEINBERG, O. D.,  
7909 So. Halsted St., Chicago, Ill.

DEAR DOCTOR: Univis licenses are issued to a limited number of ethical refractionists. This gives each Univis licensee an opportunity to prescribe a complete identified multifocal service on which there is absolute price protection and an automatic elimination of about 80% of competition.

Since only 20% are licensed it is necessary that we have those who would actively prescribe Univis regularly. Suggest that you call a Univis distributor in Chicago and he will give you a license application to sign which will be sent to us for approval. Please advise the distributor the approximate numbers of pairs that you think you can prescribe monthly as this information is

naturally important in determining whether to establish additional licensees in your immediate territory.

The following are licensed Univis wholesalers in Chicago:

Central States Opt. Co.

Schroeder-Miller Opt. Co.

Miller Optical Company.

Dow Optical Company.

Sincerely yours,

THE UNIVIS LENS COMPANY,

President.

cc. R. Marks.

J. R. S.: R.

Yellow report made—ER.

447

Exhibit 18

448

JANUARY 4, 1938.

WAHLGREN-CARLSON OPTICAL CO.,

Omaha, Nebraska.

Attention: Mr. W. R. Carlson.

GENTLEMEN: With reference to the application of Dr. O. H. Beckwith, Beatrice, Nebraska.

We note that this optometrist is in connection with a drug store. The Corporation realizes that there are some very good men in such capacities, but on account of the methods so frequently associated with such connections no licensees have been appointed in drug stores. Therefore, this application will be considered as pending before the Licensing Committee.

We can either let the matter rest where it is or send a letter to the applicant, according to your wishes. The letter we would send under such circumstances would read about as follows:

"DEAR DOCTOR: This is to acknowledge receipt of your application for Representative license on the nomination of the Wahlgren-Carlson Optical Co.

The application will receive the consideration of the Licensing Committee of the Corporation, and you will be notified of what action is taken.

Thanking you for your interest,

Sincerely yours,

THE UNIVIS CORPORATION."

The above letter is designed to show that the Corporation is taking the responsibility for failure to act favorably at once on the application and to protect the distributor.

Please let us know whether you want us to send the letter to this applicant.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB:NC.

449

*Exhibit 19*

450

WAHLGREN-CARLSON OPTICAL CO.

*Omaha, Nebr., January 9, 1932.*

THE UNIVIS CORPORATION,

*Dayton, Ohio.*

Attention: L. V. Browne.

GENTLEMEN: Acknowledging your letter of January 4th which has to do with the application of Dr. O. H. Beckwith, Beatrice, Nebraska.

Dr. Beckwith in spite of the fact that he is located in a drug store we understand has always been quite ethical in his methods. Have never heard anything at all to indicate that he did price-cutting or resorted to sensational advertising. We rather feel that a Representative's license could be safely granted him, and yet for various other reasons that temporarily apply, our final verdict is that you let the matter drop, writing him no letter at the present time.

It's our belief that eventually and at perhaps no extremely distant date Doctor Beckwith will move to some other location and if so, then he would be in line for the license.

Thanking you for the care you've exercised in this connection and your evident desire to protect the wholesaler involved, we remain

Sincerely yours,

WAHLGREN-CARLSON OPTICAL COMPANY.

E. G. WAHLGREN

E. G. Wahlgren.

EGW:d.

451

*Exhibit 20*

452

10-28-39.

R. E. MERVILLE.

J. R. SILVERMAN.

DEAR RAY: Upon my return I found a telegram from Nelson-James, and also another letter from Dr. Soss. It appears that the boys are really trying, and there is only one angle that I think



would merit our giving their application consideration at this time.

I refer to the matter that has developed which involves the manufacturing of a duplication of our Univis D style by Titmus in the very near future. We have learned on official authority that Titmus are now soliciting orders for such a bifocal, and I have a letter which Titmus sent to a jobber confirming the fact that they fully intend coming on the market with such a product about the first of the year.

Obviously, their position is that many independent jobbers, whom they serve with other products, cannot secure Univis, and they feel that this market should be taken care of.

We naturally will not take this lying down, but what our policy will be is yet to be determined. I think they will find it difficult regardless of patent structure, to secure very much business from our present established licensees, but we must begin to think seriously in terms of those jobbers that might be considered border-line applicants at the present time.

Perhaps Nelson-James falls in this category, and it may be well to consider this angle very carefully since Berschwinger is now en route to California, if he has not already arrived there. It may be that Nelson-James' telegram was prompted by a call from Berschwinger, and you need to check this angle very carefully.

453 I will write you at greater length early next week on this Titmus matter so that we can present a uniform story to our distributors. There is little doubt in my mind but what the independent jobber who has been protected by us for these many years will think very carefully before placing any business with Titmus on a Univis type lens, but it is well that we do not take the matter too lightly, and work out a very well rounded plan to off-set their activities.

Suggest you check the Nelson-James situation for the circumstances above related does place a different complexion on the situation as you no doubt agree.

I am enclosing copy of letter Roy sent this office just after Milton finished working with him. This is only one of several along the same line, but I believe it confirms my story and makes it all the more difficult to understand the letter he sent you.

With best regards, I remain

Sincerely,

jrs/k.

454

THE UNIVIS LENS COMPANY,  
Dayton, Ohio, November 30, 1939.

Mr. E. H. TITMUS,  
Titmus Optical Company,  
Petersburg, Virginia.

Dear Mr. TITMUS: Following our conversations in Columbus, it was my understanding that you would temporarily withdraw from any further solicitation of orders for your Bonvue C until such time as you were able to arrive at a definite conclusion. We are advised this week that your Mr. Marshall has been soliciting orders for Bonvue C, especially in Miami, Florida, and statements to the effect that an order was taken from Pan American Optical Company were circulated in Miami.

In about two weeks we will have our annual sales meeting as well as numerous territorial distributor meetings. At this time it is always our policy to outline in detail our sales promotional and advertising program for the coming year. Obviously, your decision will have a great bearing upon the program outlined for the coming year, and it will therefore be very much appreciated if we could hear from you within the next week.

May we, therefore, have the pleasure of your early consideration to this very important problem.

With best regards, we remain  
Very truly yours,

THE UNIVIS LENS COMPANY.

J. R. Silverman.  
k.

455

TITMUS OPTICAL COMPANY, INC.,  
Petersburg, Va., December 4, 1939.

THE UNIVIS LENS COMPANY,  
Dayton, Ohio.

Attention: Mr. J. R. Silverman.

Dear Mr. SILVERMAN: Replying to your letter of November 30, we will say that we have not, neither have we instructed any of our salesmen, to solicit any orders for our Bonvue C bifocals. However, we have received two or three orders for these, but have written them that we could not fill the orders at this time, for the reason that we have been delayed on getting out our price lists and some printed matter on these, and would not be in a position to make any deliveries until sometime after the first of the year.

Unless we make some changes in our plans, we believe we will be ready for some distribution on these sometime during January,

and as the writer has stated to you previously, it is not our intention to disrupt the present setup on this type of bifocals.

With kind regards, we are

Very truly yours,

TITMUS OPTICAL COMPANY, INC.,  
(Signed) E. H. TITMUS.

EHT:S.

456

THE UNIVIS LENS COMPANY,  
Dayton, Ohio, December 12, 1939.

Mr. E. H. TITMUS,

*Titmus Optical Company, Petersburg, Virginia.*

DEAR MR. TITMUS: In the event that you go forward with your plan of making and selling the type D Univis bifocal lens, then you should be advised that it is our intention to proceed immediately against you or any others who cooperate with you in the making or selling of any such lenses that infringe our patents. We are prepared to proceed with the litigation at once in the event you so decide. In the making of this statement, we do so with all due kindness and not in the nature of a threat, but simply as a statement of our wishes and of our intentions to protect the license accorded to us by law.

As to whether such action on your part would be interpreted as a constructive move by the independent jobber and better large retailer, we believe that only time will tell, and we are satisfied to leave this phase of the judgment of the independent jobber and retailer who has benefited so materially during the past 13 years from the Univis policy and the protective features afforded them through the distribution of our products.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, President.

457

DECEMBER 14, 1939.

MR. GEORGE OLIVER JOHNSTON,  
*Johnston Optical Company,  
Industrial Bank Building,  
Detroit, Michigan.*

DEAR MR. JOHNSTON: After several requests, I have finally gotten the attached copy from E. H. Titmus.

In order that you will be advised of our policy, not only in protecting our business but in protecting the business of those who are our licensees, we are attaching a copy of a letter what we now understand to be his threat to break down the entire structure in the business which you and ourselves have built up under our patents, and their intention to infringe.

We have been advised by our counsel that we have ample grounds to take adequate action on one or more of our patents, as well as adequate action for unfair competition in this matter.

You will be kept closely informed of further developments.

Sincerely yours,

THE UNIVIS LENS COMPANY.

J. R. Silverman.

M.

Encl.

[Telegram]

458

WESTERN UNION

DETROIT, MICH., 15 236P.

TITMUS OPTICAL CO.,

Petersburg, Vir.

Please cancel orders Twenty-eight Thirty-six and Seven and Thirty-three Forty-nine for January Second delivery.

JOHNSTON OPTICAL CO.

159 CC: Mr. J. Silverman, Univis. Lens Company, Dayton, Ohio.

DECEMBER 15, 1939.

JOHNSTON OPTICAL COMPANY,

Industrial Bank Building, Detroit, Michigan.

Attention: Mr. George O. Johnston.

DEAR MR. JOHNSTON: Your telegram of today, asking that we please cancel your orders #2836 and 2837 and #3349 which were for January 1st shipment has just been called to my attention.

No doubt you had not received our letter of the 14th, in which we stated that this order would be completed and ready to go out to you by January 1st, and asking whether you preferred this shipment made by freight or by express.

To be frank with you, your telegram was quite a set-back to us, for the reason that these orders are completed, have been packed in wooden boxes and are ready for shipment. No doubt you must have some good reason for cancelling these orders, and if you feel at liberty to give us the reason, we would certainly like to know, as we have given special attention to these orders, and would regret very much to have to unpack all of these boxes and put the lenses back in stock, and we would appreciate an expression from you regarding this.

Very truly yours,

TITMUS OPTICAL COMPANY, INC.,

Signed E. H. TITMUS.

460 CC: Mr. J. Silverman, Univis Lens Company, Dayton,  
Ohio.

DECEMBER 18, 1939.

Mr. E. H. TITMUS,  
*Titmus Optical Company,*  
*Petersburg, Virginia.*

DEAR MR. TITMUS: Your letter of December 15th suggests that you would like to know why we cancelled our orders for January 1st delivery, and you certainly are entitled to know the reason.

It is our understanding that you intend to proceed with the manufacture of a bifocal lens similar to Univis, and that is our only reason for cancelling these orders. Aside from the patents and the question of your rights in the matter, such a procedure would be very injurious to us, even if you did not cut the price.

As I told you at the convention in Columbus, it is not for us to tell you how to run your business, but naturally we must be governed accordingly.

If we are wrong in our contention, and you will assure us that you do not intend to make a bifocal similar to Univis, I will be pleased to reinstate the orders.

Very truly yours,

JOHNSTON OPTICAL COMPANY,  
G. O. JOHNSTON, Jr.

461

THE UNIVIS LENS COMPANY,  
Dayton, Ohio, December 18, 1939.

Mr. R. H. UHLEMANN,  
*Uhlemann Optical Company,*  
*1349 Pittsfield Building, Chicago, Illinois.*

DEAR DICK: On November 30th we wrote Mr. E. H. Titmus as per the attached copy, and on December 5th received his reply which is also attached hereto. While the answer from Titmus is somewhat ambiguous, we cannot place any interpretation other than that they propose going ahead with an infringing action in connection with one of our types of Univis.

In order that you will be advised of our policy in not only protecting our business but in protecting the business of those who are licensees, we are attaching a copy of a letter that we have addressed to Mr. E. H. Titmus in view of what we understand to be his threat to break down the entire structure in the business which you and ourselves have built up under our patents, and his intention to infringe.

We have been advised by our counsel that we have ample grounds to take adequate action on one or more of our patents as well as adequate action for unfair competition in this matter.



Accordingly, the attached letter under date of December 12th was sent to Mr. E. H. Titmus.

For your information, copies of this correspondence were sent to one of our very largest Univis jobbers who is also a very large user of Titmus lenses. Without comment, we received a copy of a telegram which this company sent to Titmus Optical Company on December 15th: "Titmus Optical Company, Petersburg, Virginia: Please cancel our orders 2836 and 7 and 3349 for January 2nd delivery." For obvious reasons we leave this writer anonymous.

Such an unsolicited expression of loyalty and cooperation from a very large independent jobber who having recognized an immediate threat to a very important phase of his business, has used his best means of immediate retaliation, is indeed appreciated.

We will keep you fully informed of any developments.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, *President*.

JRSilverman.

k.  
enc.

463

DECEMBER 19, 1939.

Mr. GEORGE OLIVER JOHNSTON,  
*Johnston Optical Company*  
*Industrial Bank Building, Detroit, Michigan.*

DEAR MR. JOHNSTON: The type of action exemplified by the copy of the telegram received from you is indeed appreciated at this end. It is in effect employing the use of a potent weapon which the better class jobber has to protect his vital interests. I trust that the numerous other jobbers throughout the United States that have expressed their readiness to adopt similar measures will act just as quickly and effectively, to the end that a very valuable program will be preserved.

In any event, as previously advised, prompt severe action will be taken to the very limit of our ability, for we consider this more than a battle against an individual, as it is really a fight for a principle and against a fairly cleverly organized opposition intent upon tearing down.

Many thanks to you, again, and I trust you will keep us informed of any further developments, as we, of course, will keep you informed.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, *President*.

k.

464 cc Dalton-Webb, 1-30-40.

TITMUS OPTICAL COMPANY, INC.,  
Petersburg, Va., U. S. A.

UNIVIS LENS COMPANY,  
Dayton, Ohio.

Attention: Mr. J. R. Silverman.

DEAR MR. SILVERMAN: We are in receipt of your letter of the 12th having reference to our making and selling our Bonvue C Bifocals. Your intention to proceed immediately against us or our customers is noted.

You will recall that we discussed this matter on your recent visit, and I think it was also discussed at Columbus, at which conferences we suggested, purely in the interest of avoiding litigation, that some way be worked out whereby we could make lenses without becoming involved in any way by reason of the claims you make as to the scope and validity of your patent. This proposition appears to be not approved by you, and, while we should much prefer to work together, if you are convinced that you have any claim which you can sustain against us, you are at liberty to institute suit.

We have not gone into the manufacture and marketing of our Bonvue C Bifocals without considering your alleged rights and the rights of others. As a result of the investigation which we have made, we feel that there is no just complaint against us, and we will go ahead with our plans and take care of our interest if you should insist on litigating the matter. As a matter of fact, we have somewhat delayed our plans, hoping that there would be no friction between us, because we do not think there is any foundation for it, but, unless you wish to take it up in a friendly way and discuss it with us, we shall not further delay our plans for sending out samples and taking orders. We always avoid litigation, if possible, but there seems to us, after our investigation of the situation, to be no cause for complaint, and it seems to us it would be very regrettable to bring out in Court and make public the very small extra cost of producing this lens, compared to what the public is being charged for it, and it would do us more harm than the loss of a suit by either you or ourselves. Further, in event of the patent being declared invalid in any suit you might bring against us, that, of course, would throw the matter open to everyone.

While our plans are made for proceeding along the lines stated above, we are still willing to discuss with you any reasonable plan

for reaching a satisfactory solution of the matter without litigation.

Yours very truly,

By: E. H. TITMUS.

EHT:S.

466

DECEMBER 26, 1939.

Mr. GEORGE OLIVER JOHNSTON,  
*Johnston Optical Company,*  
*Industrial Bank Building, Detroit, Michigan.*

DEAR MR. JOHNSTON: Thank you very much for your invitation to your annual sales meeting on January 6th.

I plan to be in Detroit late Friday night, and will await your call at the Detroit-Leland Hotel Saturday morning regarding the time you will want me to appear on the program. I will leave it entirely up to you as I am completely at your disposal.

I want to take this opportunity to congratulate you on your recent move in connection with the Titmus Optical Company. Needless to say, it made me feel very happy.

Hoping that you and your family enjoyed a very fine Christmas, and looking forward to seeing you again, I remain

Very truly yours,

THE UNIVIS LENS COMPANY.

R. Marks.

k.

467

cc R. E. Merville.

cc M. T. Silverman.

cc R. Marks.

cc V. H. Hancock.

cc Dalton Webb 1-30-40.

DECEMBER 26, 1939.

Mr. E. H. TITMUS,

*Titmus Optical Co., Inc., Petersburg, Virginia.*

DEAR MR. TITMUS: I am very much surprised to receive your letter of the 20th because I think you have overlooked the negotiations between us that have already gone on. I am very glad, however, that you would like to discuss this matter further, and, of course, I am willing to sit down with you and go over the whole matter again to see if we can't work out a satisfactory basis of cooperation. That has been my position throughout this entire matter and I will be very happy to join you in the matter again.

You will recall that when we discussed this matter in the recent past, I suggested to you I would use my good offices in endeavor-

ing to get you a license from the Company that has the rights in connection with the curved top insert. You will also recall that I told you I would be glad to aid you in securing a license under the patent of the inventor Stotsky who had a patent on the concave top of the insert.

By following this latter course, you would have had a product of your own which would have been entirely distinctive and you could have built up your new line without breaking down the situation which our people have built up. On the other hand, if you had followed the plan of taking the curved top, which has widely sold without any restrictions like ours, you would have had a broader market more nearly adapted to your merchandising and manufacturing policy.

We do not want you to go into the flat top because of the inevitable confusion in the trade and the breaking down of our situation, which has been built up into a good business after the expenditure of great effort, time, and money and from which we have the right to expect a continuing business from both our patent situation and from the good will that is identified with the business distinguished by the flat top insert.

468 However, it may be that a further discussion will enable us to work out some joint constructive plan, as to which I have an entirely open mind. You can count on me to cooperate with you to the utmost to do anything that will build up this trade and not discredit the work of the members of the trade, upon whom both of us must depend.

However, I must correct a statement at the bottom of page one of your letter which is utterly without foundation, that there is any discrepancy between the actual cost and the price of our lenses because that is utterly untrue and our price is fully justified. Indeed, we would be very happy to have that situation brought out in public and there is no one of the trade would not fully agree with us that our price with relationship to cost and quality is not only very fair but is comparable with inferior lenses which are securing prices out of proportion to their quality.

If it is worrying you that there is anything in our picture that cannot be brought out into the open and fully disclosed, then you can dismiss that worry at once because everything that we have been doing is an open book and we are not only not ashamed of it but we are very proud indeed of it. We think the tribute of the trade as to what it thinks about us and what we have done to build up this industry is sufficient answer on that score.

I want to call your attention to one important thing and that is that no member of the public has ever received, to our knowledge, any second quality lenses from us. We take every possible pre-

caution at thousands of dollars of expense to make the finest first quality lenses, and do not sell any of the second or third quality lenses, which are scrapped by us if made and are caught by our inspection system. We likewise only sell through first class channels in the trade so that the public can be assured of dealing with the highest grade people from whom they get only the highest grade lenses of our make.

469 Of course, you understand that if we have to take action against you for unfair competition in duplicating the exact size, shape and form of our insert which has become identified with us and in the public mind for thirteen years as representative of the highest grade lenses, then we will have to bring in the open the fact of the second and third quality lenses that you have been selling to the public without any discrimination or warning to the public of the nature of such lenses.

You will recall that we have done far more than we were ever obligated to do by offering to help you get rights to make the curved top or get rights to make the concave top so as to prevent unfair competition and even went to the extent of offering to take off your hands the thousand pairs of flat topped insert lenses which you had made to order to prevent anything like this happening to the injury of the public and our distributing trade, as well as ourselves. I do not think any company could go any further than we have to try to prevent this sort of unfair competition.

Despite all this, I am still glad to sit down with you without any prejudice to the rights of either of us, just as I am writing this letter without any prejudice to see if there is any possible basis of preventing any such injury, both to the public and ourselves, after our thirteen years of successful endeavor to build up this trade and do a real job for the public interest.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, *President*.

k.

470 Company Correspondence—The Univis Lens Co.

(Confine each communication to one subject)

To Univis:

From MTS (M. T. Silverman)

Place, Cleveland, Ohio. Date 1-9-10.

F. W. King Optical Co. and U. S. Optical Co. today cancelled orders placed with Titmus last week.

Just wondering what action N. Y. C. jobbers will take, if any. Really sorry I'm not there to try and put the bug in their ear to "Go Ye and Do Likewise"!!



From the progress made here on calls this far, I now am quite certain that I will be in the factory Friday morning.

Looking forward to seeing all.

Kindest regards,

MTS

M. T. SILVERMAN.

P. S. Nat is doing very nicely, thank you!

471

THE UNIVIS LENS COMPANY,  
Dayton, Ohio, January 6, 1940.

CENTRAL OPTICAL CO., INC.,

229 E. Sixth St., Cincinnati, Ohio.

GENTLEMEN: Early in November we were advised that Titmus Optical Company was showing a sample bifocal lens blank with the indication that they intended proceeding with the manufacture of this blank some time during this year. The writer spent a day in Petersburg at the Titmus plant discussing this matter with Mr. Titmus and associates, pointing out the possible destructive effect on the better independent jobber picture if they went through with their contemplated plans. Mr. Titmus expressed a sympathetic understanding of the situation and agreed to reconsider and advise us of his decision.

On November 30th we wrote Mr. E. H. Titmus as per the attached copy, and on December 5th received his reply which is also attached hereto. While the answer from Titmus is somewhat ambiguous, we cannot place any interpretation other than that they propose going ahead with an infringing action in connection with one of our types of Univis.

In order that you will be advised of our policy in not only protecting our business but in protecting the business of those who are our licensees, we are attaching a copy of a letter that we have addressed to Mr. E. H. Titmus in view of what we understand to be his threat to break down the entire structure in the business which you and ourselves have built up under our patents, and his intention to infringe.

We have been advised by our counsel that we have ample grounds to take adequate action on one or more of our patents, as well as adequate action for unfair competition in this matter.

Accordingly, the attached letter under date of December 12th was sent to Mr. E. H. Titmus.

For your information, copies of this correspondence were sent to one of our very largest Univis jobbers who is also a very large user of Titmus lenses. Without comment, we received a copy of a telegram which this company sent to Titmus Optical Company on December 13th: "Titmus Optical Company, Petersburg, Vir-

ginia: Please cancel our orders 2836 and 7 and 3349 for January 2nd delivery." For obvious reasons we leave this writer anonymous. Such an unsolicited expression of loyalty and cooperation from a very large independent jobber who having recognized an immediate threat to a very important phase of his business has used his best means of immediate retaliation, is indeed appreciated.

We will keep you fully informed of any developments.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, *President.*

J. R. Silverman.

k.

enc.

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THE UNIVIS LENS COMPANY,  
*Dayton, Ohio, 1939.*

On November 30th we wrote Mr. E. H. Titmus as per the attached copy, and on December 5th received his reply which is also attached hereto. While the answer from Titmus is somewhat ambiguous, we cannot place any interpretation other than that they propose going ahead with an infringing action in connection with one of our types of Univis.

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250 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

of his business has used his best means of immediate retaliation. is indeed appreciated.

We will keep you fully informed of any developments.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, *President.*

m.  
encl.

475 cc sent JRS, Miami Beach, 1-9-40.

JOHN S. MILAN OPTICAL COMPANY

Nashville, Tenn. Jackson, Tenn. Huntsville, Ala.

JANUARY 8, 1940.

UNIVIS LENS COMPANY,

*Dayton, Ohio.*

Attention: Mr. J. R. Silverman.

GENTLEMEN: This will acknowledge your letter of the 6th with copies of your letter to, and reply from Mr. Titmus.

We wish to congratulate you on the stand that you are taking on this, and want you to know that you have our cooperation.

With very best wishes, we are

Yours truly,

JOHN S. MILAN OPTICAL CO.,

By (signed) JOHN S. MILAN.

jsm/el.

476 cc. sent JRS, Miami Beach, 1-10-40.

cc. sent. MTS (M. T. Silverman).

J. E. LIMEBURNER CO.

1923 CHESTNUT STREET,

Philadelphia, January 8, 1940.

Recd. Jan. 10, 1940.

THE UNIVIS LENS CO.,

*Dayton, Ohio.*

GENTLEMEN: We have your note of January 6, together with copies of your correspondence with Mr. A. H. Titmus.

We are very much pleased to see some Manufacturer take a stand in a matter of this kind which tends to protect their customers. We are of the opinion that a great deal of the trouble in the optical business at the present time comes from the laxity of Manufacturers in selling to all kinds of cut-price houses.

We have never bought any material from the Titmus Optical Company, and we certainly do not expect to begin to buy now.

Thanking you very much for advising us of your stand in this matter, we are

Very truly yours,

J. E. LIMBURNER Co.,

(KH)

JOSEPH E. HAINES,

*President.*

477 cc sent JRS, Miami Beach, 1-9-40..

cc sent Roy Marks.

THE DALTON-WEBB OPTICAL COMPANY,

610 EDISON BUILDING,

Toledo, Ohio, January 8, 1940.

(Jan. 9, 1940, rec'd)

Mr. J. R. SILVERMAN,

*Univis Lens Company, Dayton Ohio.*

DEAR MR. SILVERMAN: Prior to your letter of January 6 we had done about one half the job that the anonymous wholesaler did in his telegram.

Today we cancelled a monthly order for kryptoks, are placing no white or Crookes single vision lens orders, and as soon as we can match the Velvet-lite stock we have, we will change to the new source. That will be 100%.

The writer does not see why this company should support a factory that promotes the business of the mail order and cut rate houses.

You have our whole hearted support in all you say in your letter and in the copies of the other correspondence.

Very truly yours,

DALTON-WEBB OPTICAL COMPANY,

(Signed) W. H. KIRK,

W. H. Kirk, *President.*

WHK:ms.

478 cc. MTS (M. T. Silverman).

cc JRS, Miami Beach, 1-10-40.

REESE OPTICAL CO., INC.,

RICHLAND TRUST BLDG.,

Mansfield, Ohio, January 9, 1940.

UNIVIS LENS COMPANY,

*Dayton, Ohio.*

GENTLEMEN: Your letter, and the copies of the letters to Titmus Optical Company, are interesting and we thank you for them.

This apparently is another case of a parasite in the industry attempting to cash in on the good work of others. Inwardly they care little for the ultimate results of these destructive moves, but if they go through with their idea on the Bonvue C they will find that the legitimate jobbers will retaliate.

If more jobbers who have orders at the Titmus factory right at this time would wire them the same as you mention in your letter, Mr. E. H. would probably change his tune.

We will be interested in any developments, and know you will be successful in stopping them on this item.

Sincerely yours,

(Signed) REESE OPTICAL COMPANY, INC.  
C. E. REESE.

CER:MF

479 Company Correspondence—The Univis Lens Co.  
(Confine each communication to one subject)

IRS

To Univis. (Rec'd Jan. 11, 1940)

From MTS (M. T. Silverman).

Place, Cleveland, Ohio. Date 1/10/40.

Clarence Reese of Mansfield joined me for dinner tonight and is cancelling Titmus order tomorrow for 100 prs. kryps and some "Perfex" stock. No further business will be given them, according to his statement, unsolicited, tonite.

Rooney Opt. Co., as you know, probably, has been undergoing some changes since last October, (due to Pat Rooney's death). I have tried to keep in close touch with this situation thru their manager, Fred Blauman. After our talk today his assurance, made in very certain terms, concluded with "We will let Titmus know that Bonvue C order is not to be filled—we won't handle them, I promise"!!

Everything here in Cleveland running smoothly. Had excellent chat with Drs. A. B. and W. E. Bruner today on Univis vs. Panops.

See you Friday.

Best regards.

(Signed MTS) M. T. Silverman.



480

cc sent JRS at Miami Beach 1-12-40

MAX ZADER, INC.  
115 WEST FULTON STREET,  
New York, January 10th, 1940.

Mr. J. R. SILVERMAN, *President*  
*Univis Lens Company,*  
*Dayton, Ohio.*

My Dear Mr. Silverman: I heartily agree with the substance of the letter dated January 6th.

It would be outrageous if present conditions are disturbed.

Unfortunately, we buy very little from the Titmus Optical Company, and I doubt very much that it amounts to \$2,000.00 a year, but if you feel that it would help the situation if everybody, including smaller accounts, cancelled their orders with the Titmus Optical Company, we will be very glad to do so.

Sincerely yours,

MAX ZADER, INC.  
(Signed) M. ZADER, *President.*

481

cc sent JRS 1-12-40 Miami Beach.  
cc sent Roy.

BELGARD, INC.

OPTICIANS

Six North Michigan Avenue, Chicago

Austin B. Belgard, *President.* Telephone State 5363.

JANUARY 11, 1940.

Mr. JACK SILVERMAN,  
*Univis Lens Company, Dayton Ohio*

DEAR JACK: Top of the morning to you! In answer to your letter of the 6th, I do hope you will be able to work out some proposition with Titmus that will not upset the apple cart.

Believe me, if I were buying any lenses from Titmus, I surely would write them and express my thoughts without holding back any punches. If you have anything in mind that I might do to help you persuade Mr. Titmus to discontinue his manufacture of straight top bifocals, I shall be most happy to do so.

We certainly do not want the straight top bifocal business shot full of holes, so here's wishing you a lot of luck.

Sincerely yours,

(Signed) AUGST.

Austin B. Belgard.  
mb.

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Exhibit 20

cc sent JRS at Miami Beach 1-12-40.

cc sent Roy.

cc sent John.

PARAMOUNT OPTICAL COMPANY,

33 MONUMENT CIRCLE,

Indianapolis, Ind., January 11, 1940.

MR. JACK SILVERMAN,

c/o Univis Lens Co., Dayton, Ohio.

DEAR JACK: I didn't think I would have to write you so soon since we met in Columbus, Ohio and talked about all the different angles of business and what could be expected; but before I even get started in the new year, we have bad news. So, I know you are interested and thought you would like to see a copy of the letter I sent to Titmus.

I hope this situation will be cleared up very soon and that my letter with other similar ones will do the work.

I also hope the Univis Lens Company has a big year and that the new factory will be too small and I will be able to put the second stone in the building. Don't forget I am still waiting to put the trade mark on as soon as the entrance is ready.

Wishing you a very prosperous and happy New Year, I remain  
Very truly yours,

PARAMOUNT OPTICAL COMPANY,

By (Signed) ALFRED G. EBERG.

AGE: GJ.

Enc.

483

cc sent JRS at Miami Beach 1-13-40.

cc sent Roy.

CENTRAL STATES OPTICAL COMPANY, INC.,

5 SOUTH WABASH AVENUE,  
Chicago, Illinois, January 12, 1940.

UNIVIS LENS Co.,

Dayton, Ohio.

Attention: J. R. Silverman.

DEAR JACK: Just a note to thank you for your letter of January 6 outlining the correspondence you have had with the Titmus Optical Company.

We await with a great deal of interest the final outcome of your negotiations with them.

With kindest regard and thanking you for keeping us informed,

Sincerely yours,

CENTRAL STATES OPTICAL COMPANY,

By (Signed) ART.

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JANUARY 15, 1940.

J. E. LIMBURNER COMPANY,

1923 Chestnut Street, Philadelphia, Pennsylvania.

Attention Joseph E. Haines, President.

DEAR MR. HAINES: This will acknowledge your letter of January 8, addressed to Mr. Silverman, and to thank you for your cooperation in the matter.

At the present time Mr. Silverman is out of the city and will reply to your letter on his return to this office about January 23.

Very truly yours,

THE UNIVIS LENS COMPANY,  
K. DUNNE, Secretary.

485

JANUARY 15, 1940.

JOHN S. MILAM OPTICAL COMPANY.

Doctors' Building, Nashville, Tennessee.

Attention: Mr. John S. Milam.

DEAR MR. MILAM: This will acknowledge your letter of January 8, addressed to Mr. Silverman, and thank you for the cooperation you have offered.

At the present time Mr. Silverman is out of the city and will reply to your letter upon his return to the office about January 23rd.

Very truly yours,

THE UNIVIS LENS COMPANY,  
K. DUNNE, Secretary.

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JOHNSTON OPTICAL COMPANY,  
Detroit, Michigan, January 15, 1940.

MR. J. R. SILVERMAN,

*Univis Lens Company, Dayton, Ohio.*

DEAR MR. SILVERMAN: Our David Whitney office sent you an order DW #2 today for a pair of flat Univis R edged lenses.

It so happens that both the patient and the doctor are personal friends of mine, and I am especially anxious to give good service in this case.

The doctor called me up and asked if I had any influence with you, and I said I thought I did, so please don't let me down.

Are there any new developments on the Titmus situation?

Very truly yours,

(Signed) JOHNSTON OPTICAL COMPANY,  
GEO. G. JOHNSTON.  
G. G. Johnston, J. H.

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ROOSEVELT HOTEL,  
Pittsburgh, Pa., 1/15/40.

UNIVIS: This is the alleged conversation made by Titmus' head midwestern salesman, Mr. Bershwanger to a large independent jobber.

"For some reason, I am blamed for Titmus going into Bonvue C-lens. Why, one big jobber has cancelled an \$11,000.00 order on us and a lot of small independents have also cancelled. It's all because Univis sent out a letter telling all their customers about that first one's action. They (he meant Univis) will be darn sorry they ever sent it to a lot of their customers.

Mr. Titmus will now fight twice as hard and there's plenty of money if he needs it. He's sure we can't be stopped legally."

Everyone, of course, has a right to his or her own opinion. Triangles' action and decision is very similar to some others except that they cannot "break off all at once."

Regards,

MTS.

M. T. SILVERMAN.

488

JANUARY 15, 1940.

THE DALTON-WEER OPTICAL COMPANY,  
610 Edison Building, Toledo, Ohio.

Attention: W. H. Kirk, President.

DEAR MR. KIRK: This will acknowledge your letter of January 8, addressed to Mr. Silverman, and thank you for the cooperation you have offered.

Mr. Silverman is out of the city at the present time and will return about January 23, at which time he will reply to your letter.

Very truly yours,

THE UNIVIS LENS COMPANY.

K. DUNNE, *Secretary*.

k.

489

JANUARY 15, 1940.

REESE OPTICAL COMPANY, INC.

*Richland Trust Building, Mansfield, Ohio.*

Attention: C. E. Reese.

DEAR MR. REESE: This will acknowledge your letter of January 9, addressed to Mr. Silverman, and thank you for the cooperation you have offered.

Mr. Silverman is out of the city at the present time and will reply to your letter upon his return to the office about the 23rd of this month.

Very truly yours,

THE UNIVIS LENS COMPANY,

K. DUNNE, *Secretary*.

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JANUARY 17, 1940.

JOHNSTON OPTICAL COMPANY,

*Industrial Bank Building, Detroit, Michigan.*

Attention: Mr. George O. Johnston.

DEAR MR. JOHNSTON: This will acknowledge your letter of January 15, addressed to Mr. Silverman.

The prescription for a pair of flat Univis R edged lenses is going forward to your David Whitney office today.

At the present time Mr. Silverman is out of the city and will communicate with you on the development of the Titmus situation upon his return to the office about January 23.

Very truly yours,

THE UNIVIS LENS COMPANY,

K. DUNNE, *Secretary*.

491

cc J-RS.

cc Roy.

JANUARY 18, 1940.

MR. ALFRED G. EBERG,

*Paramount Optical Company,*

*33 Monument Circle, Indianapolis, Indiana.*

DEAR MR. EBERG: Your letter of January 11th was forwarded to Mr. J. R. Silverman at Miami, where he is vacationing. He has asked the writer to reply.



Thanks for your letter of January 11th. We know you are quite concerned about any event which affects your vital interests and it is our desire to keep our licensed distributors fully advised of all circumstances pertaining to their distribution of Univis products.

Thanks for your good wishes for 1940 which I heartily reciprocate.

With kindest regards, I remain

Sincerely yours,

THE UNIVIS LENS COMPANY.  
J. R. SILVERMAN.

k.

492 cc JRS (J. R. Silverman).  
cc MTS (M. T. Silverman).

JANUARY 18, 1940.

MR. MAX ZADEK,

*Max Zadek, Inc., 115 Fulton Street, New York, New York.*

DEAR MR. ZADEK: Your letter of January 10 was forwarded to Mr. J. R. Silverman at Miami, where he is vacationing. He has asked the writer to reply.

Thank you for your letter of January 10th. It is merely our intention to keep our licensed distributors informed of all matters vitally affecting their distribution of Univis products. Your offer of cooperation is indeed appreciated, but we want you to know that any steps taken by license distributors to protect their own interests must be entirely voluntary and without any solicitations from us.

With kindest regards, I remain

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN.

k.

493 cc sent JRS at Miami.  
cc sent REMerville.

JANUARY 18, 1940.

MR. A. B. CHANEY,

*American Optical Company,*

*25 S. Kearney Street, San Francisco, California.*

DEAR MR. CHANEY: Your letter of January 9th was forwarded to Mr. J. R. Silverman at Miami, where he is vacationing. He has asked the writer to reply.

Your proposed letter to branches, managers and salesmen is, I believe, satisfactory. I trust it will receive the same attention as Mr. George S. Johnston's bulletin. It is regrettable that this step is necessary from a licensed distributor, for as long as you are

handling a product of any manufacturer and receiving a profitable return, it is reasonable to expect that no adverse propaganda be used until the entire matter has first been thoroughly discussed with the manufacturer, and procedure in the circumstances fully agreed upon.

I trust we may expect your fullest cooperation in the future, and please be assured of our continued efforts toward assisting you in the successful promotion of Univis for our mutual benefit.

With kindest regards, I remain

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN.

k.

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TITMUS OPTICAL COMPANY,  
*Petersburg, Virginia, January 19, 1940.*

CENTRAL OPTICAL COMPANY, INC.,  
*P. O. Box 779, Cincinnati, Ohio.*

Attention: Mr. Ralph Lanius.

DEAR MR. LANIUS: We are in receipt of your letter of the 17th and can assure you that we appreciate the sentiments expressed in same very much indeed.

We have not fully decided on just what course we will pursue in reference to our new Bonvue C Bifocal with flat top segment. Your letter signifies that we really have co-operated with the real independent jobbers to the best of our ability, and we hope to be able to continue to do this.

So far as some other manufacturers coming out with a flat top bifocal, we do not doubt for a minute but what other manufacturers have had this up their sleeves, all ready to come out with one, as soon as someone else makes a move; but you know that we have been accused all along of being followers and not leaders, and we would hate to wait for someone else to come out with this bifocal, and we have to follow suit, after we have already done our experimenting and built up a fair stock.

I would deem it a pleasure to be able to sit down and talk to you or any of our other customers in reference to this matter, but I do not see how I could take a trip right at this time. However, I can assure you that since Mr. Silverman has taken the stand he has in this matter by not only threatening us with a suit but also by intimidating some of our customers that we do not contemplate doing anything until the matter is gone into, either by correspondence with our customers or a personal visit, and we hope to be able to go fully into this matter with them within the next week or ten days.

Assuring you that we appreciate very much your letter, and with kind regards to all, we are

Sincerely yours,

TITMUS OPTICAL COMPANY, INC.,  
By: E. H. TITMUS.

EHT:S.

495

W. A. JONES OPTICAL DISPENSING CO.,  
1104 EUCLID AVENUE,  
Cleveland, Ohio, January 24, 1940.

UNIVIS LENS COMPANY,  
Dayton, Ohio.

GENTLEMEN: Our attention has been called to the fact that the Titmus Optical Company is now making and soliciting orders for a bifocal blank that is identical to the Univis.

Naturally, after building up the wonderful business with Univis, that we have, we are very much concerned about the future of the Univis bifocals. Your protected prices has helped us a great deal but we now wonder if we are going to have the same conditions to face with the Univis lenses that we had with other bifocals, after the expiration of the patent rights.

We also understand that at least two court decisions have already been decided against your company, on this Titmus blank.

As we are very anxious to keep in touch with this situation, any information which you can give us will be greatly appreciated. Won't you kindly let us hear from you at once.

Yours very truly,

W. A. JONES OPTICAL DISPENSING CO.  
(Signed) WM. F. SEITH.

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JANUARY 25, 1940.

MR. WILLIAM F. SEITH,  
W. A. Jones Optical Company,  
1104 Euclid Avenue, Cleveland, Ohio.

DEAR MR. SEITH: We appreciate very much the spirit of your letter of the 24th and your interest in the maintenance of Univis protection. We can assure you that it will continue.

You have been familiar with Univis affairs for many years, Mr. Seith, and will doubtless remember that there has always been some kind of propaganda going around designed to undermine confidence, and disproved by subsequent events.

The reports concerning court decision against Univis have varied far from the facts. We have had many suits against infringers, winning case after case. In a suit which for technical legal reasons was based on only one patent feature relating to style D Univis, the decision went against us on the ground that it was anticipated

by other patents, these other patents also being Univis patents. In another federal district court against another infringer, the suit was on the same patent and the same evidence, resulting in a decision for Univis. In other words, conflicting decisions from two different federal courts and therefore subject to further procedure on the single patent phase involved, and for still further procedure if necessary, suit on the prior art patents we have that the judge cited in the case we lost, as his reason for his decision.

In addition, we have numerous other patents never challenged or involved, and it will be many, many years before expirations.

Regarding Titmus Optical Company, it appears that he was ill-advised on the possibilities of producing a lens in imitation of

Univis style D with impunity, and stated a couple of months ago that he proposed manufacturing such a bifocal.

Our counsel advised that if he should do so, we have ample grounds to take adequate action on one or more of our patents, as well as adequate action for unfair competition. Titmus was so notified by us. He also heard from numbers of independent wholesalers and large retailers to whom his intentions became known, as they consider such a step to be detrimental to their interests. There has been no further development. We hope he has abandoned the plan, as it would be annoying, and we would prefer to utilize funds for constructive, promotional work for our licensees in place of litigation.

This Univis outlook is very fine for all concerned, Mr. Seith, and our new plant in course of construction is going to be busy producing Univis precision lenses for the profit of our licensees, with protection.

Please write us if you have any further questions on this or any other subject.

Sincerely yours,

THE UNIVIS LENS COMPANY,  
L. V. BROWNE.

k.

498 cc Dalton-Webb 1-30-40.

TITMUS OPTICAL COMPANY, INC.,  
Petersburg, Va., U. S. A.

UNIVIS LENS COMPANY,  
Dayton, Ohio.

Attention: Mr. J. R. Silverman.

DEAR MR. SILVERMAN: We are in receipt of your letter of the 12th having reference to our making and selling our Bonvue C Bifocals. Your intention to proceed immediately against us or our customers is noted.

You will recall that we discussed this matter on your recent visit, and I think it was also discussed at Columbus, at which conferences we suggested, purely in the interest of avoiding litigation, that some way be worked out whereby we could make lenses without becoming involved in any way by reason of the claims you make as to the scope and validity of your patent. This proposition apparently is not approved by you, and while we should much prefer to work together, if you are convinced that you have any claim which you can sustain against us, you are at liberty to institute suit.

We have not gone into the manufacture and marketing of our Bonyue C Bifocals without considering your alleged rights and the rights of others. As a result of the investigation which we have made, we feel that there is no just complaint against us, and we will go ahead with our plans and take care of our interests if you should insist on litigating the matter. As a matter of fact, we have somewhat delayed our plans, hoping that there would be no friction between us because we do not think there is any foundation for it, but unless you wish to take it up in a friendly way and discuss it with us, we shall not further delay our plans for sending out samples and taking orders. We always avoid litigation, if possible, but there seems to us, after our investigation of the situation, to be no cause for complaint, and it seems to us it would be very regrettable to bring out in Court and make public, the very small extra cost of producing this lens, compared to what the public is being charged for it, and it would do us more harm than the loss of a suit by either you or ourselves. Further, in event of the patent being declared invalid in any suit you might bring against us, that, of course, would throw the matter open to everyone.

While our plans are made for proceeding along the lines stated above, we are still willing to discuss with you any reasonable plan for reaching a satisfactory solution of the matter without litigation.

Yours very truly,

By E. H. TITMUS.

EHT:S.

500

FEBRUARY 1, 1940.

DALTON-WEBB OPTICAL COMPANY.

610 Edison Building, Toledo, Ohio.

Att. Mr. W. E. Kirk.

DEAR MR. KIRK: We are in receipt of your letter of the 29th, and are indeed sorry to learn that Mr. Charles Webb had the misfortune to fall and break his hip and will be laid up for ten weeks



in a life-size cast. Of course, we never know what might happen to us, but I cannot imagine myself having to be in that fix.

Referring to our telephone conversation regarding a lens similar to the Univis: We can certainly appreciate your position in this matter, as well as that of some of our other customers, and we certainly do not wish to do anything which would be detrimental to the industry as a whole. At the same time we believe we should consider not only this matter, but all matters, from the point of how it would affect the greatest number of our customers, and we believe we should endeavor to do whatever is best for the majority. However, we have not definitely decided just what we are going to do regarding this matter, and it may be two or three weeks yet before we do.

We appreciate your willingness to assist us in any way possible, either as an individual or through the Wholesalers Association.

With kind regards, we are

Very truly yours,

TITMUS OPTICAL COMPANY, INC.,  
E. H. TITMUS.

EHT:S.

501 cc Roy.

FEBRUARY 6, 1940.

Mr. G. O. JOHNSTON,

*Johnston Optical Company,*

*Industrial Bank Building, Detroit, Michigan.*

DEAR MR. JOHNSTON: Several jobbers have followed your procedure in connection with the Titmus matter, while others have corresponded and otherwise expressed their apprehension over the possible results of the action contemplated by Titmus. In this connection we received a copy of a letter this morning, sent to one of our distributors, in which Mr. Titmus states that he is carefully considering the matter and will not make a definite decision for about three weeks. I feel rather certain that if the majority of the independent jobbers expressed themselves honestly and effectively, Titmus will surely see the irreparable damage that would be caused the better independent jobber by a tearing down of the better bifocal structure, and thereby change his plans.

I will keep you closely informed of any further developments, and want to again thank you for your support in this matter.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN.

E.

FEBRUARY 7, 1940.

Mr. R. G. LANIUS,  
Central Optical Company, Inc.,  
P. O. Box 779, Cincinnati, Ohio.

DEAR FRIEND RALPH: Thanks for permitting me to read the letter of January 19th from E. H. Titmus. It is being returned herewith as requested.

Not having read your letter of the 17th, I can only conclude that it was a quite complimentary letter, judging by the answer of Mr. Titmus. That is, I had so concluded as you had not told me that you had stated your position in no uncertain terms.

For your information, I want to make it perfectly clear that every possible offer of cooperation has been extended, but if Titmus proceeds with a duplication of our product that would, in our opinion, seriously jeopardize a very important structure for the independent jobber, then, naturally, we would immediately take every legal step possible to protect our rights and the rights of our customers. Therefore, to state that we have threatened them with suit is really only stating a half truth since we merely stated that suit would be brought immediately if our legal rights were infringed upon. At the same time we extended every possible offer of an amicable solution to the problem. I am sure you understand the situation.

There is very little of a complimentary nature to be said for the statement which Mr. Titmus makes as justification for his present action. I quote, "But you know that we have been accused all along as being followers and not leaders." This is certainly a mighty weak statement for what would imitating a product that has been established so firmly for fourteen years by Univis be, except following? since Titmus would not be introducing any new bifocal idea.

I hope that very careful thought will be given by Titmus before any move is made which might so seriously jeopardize such an important structure within the optical industry, and Lord knows the picture is not so good that it can afford to have the profitable bifocal part of it removed.

With kindest regards, I remain

Very truly yours,

THE UNIVIS LENS COMPANY.  
J. R. SILVERMAN.

k.

504

FEBRUARY 8, 1940.

UNIVIS LENS COMPANY,  
Dayton, Ohio.

Attention: Mr. J. R. Silverman.

GENTLEMEN: In your letter of December twelfth, nineteen hundred and thirty-nine, addressed to me, you stated that, in the event we went forward with our plan of making and selling the type "D" Univis Bifocal Lens, we should be advised that it is your intention to proceed immediately against us or any others who cooperate with us in the making or selling of any such lenses that infringe your patents, and that you were prepared to proceed with litigation at once in the event that we so decided. We assume that this letter refers to the Stanley Patent No. 1,899,777. Our position is that this patent is invalid.

In assuming that you refer to the Stanley Patent mentioned above, we would like to know whether you think there are any other patents of yours which you feel are being infringed by us. Due to the fact that the Stanley Patent is invalid, as we are advised, we know of no reason why we should not proceed with the manufacture and sale of our lenses.

Very truly yours,

TITMUS OPTICAL COMPANY, INC.

By \_\_\_\_\_

KHT:S.

505


THE UNIVIS LENS COMPANY,  
Dayton, Ohio, February 23, 1940.

Mr. E. H. TITMUS,

*Titmus Optical Company, Petersburg, Virginia.*

DEAR MR. TITMUS: I have been away for the past couple of weeks and was, therefore, unable to answer your letter of the 8th.

We would expect to sue you under the Stanley patent #1899777 if you make and sell the type D Univis bifocal lens. You seem to be under some misunderstanding as to the exact status of this patent. It has been held invalid only in the Sixth Circuit, and was held valid by a decision of Judge Otis in the Eighth Circuit at Kansas City. The patent has not been tested out in any other jurisdiction, and as far as Virginia is concerned, it is still a valid patent in this Circuit and we would expect to sustain it against you.



Without having the exact lens before us that you are proposing to make and sell, other than the general description that the lenses will be like our type D, it is difficult to definitely point out what other of our patents may be infringed by you if you so proceed.

For your information we are attaching a list of our patents issued so that you may show them to your counsel and he can make up his mind just what patent or patents you additionally infringe as he will have before him, we presume your exact lenses.

We desire to repeat that our statement to you about bringing suit was made in no sense as a threat but only as a frank statement of our intention so that you cannot feel at a later date that we have not been entirely fair in stating that we wish to protect our rights under our patents. We still feel that there is far more to be lost by those elements of the industry which we both depend upon and desire to protect, than can possibly be gained by your proposed action, and the writer is still willing and desirous of trying to work out our problems in an amicable way.

506 We also beg to advise you that we think the exact copying of our shape of insert would be confusing to the public and lead the public to believe that they were getting Univis lenses whereas they would not be doing so when they purchased from you. This we would regard as unfair competition and we would act accordingly.

Very truly yours,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN.

k.

507

THE UNIVIS LENS COMPANY  
DAYTON, OHIO

#### List of Patents Issued

#1632208  
#1729654  
#1822606  
#1868863  
#1886649  
#1932100  
#1971394  
#2032796

#2053551  
#1845940  
#1879769  
#1899777  
#1906672  
#1912165  
#1924336  
#1876497

#1949698  
#1949699  
#1958729  
#1981815  
#1996442  
#2033573  
#2025892  
#2025893

508 This letter and questionnaire mailed out on March 28, 1940, to all of our direct customers—both wholesalers and retailers.

TITMUS OPTICAL COMPANY, INC.,  
OPHTHALMIC LENSES,  
Petersburg, Va., U. S. A., March 28, 1940.

GENTLEMEN: For the past three or four years we have had requests from a good many of our customers for a bifocal with an odd shape segment. For this reason we began experimenting, and succeeded in making a blank with a segment 11mm x 22mm. We were not entirely satisfied with this, neither did it appeal to our customers.

About a year ago we began experimenting with a flat top segment, and have succeeded in making one of the best, if not the best, bifocals with odd shape segment that has ever been put on the market. (You know our reputation for quality lenses in both bifocals and single vision lenses.)

Since it has come to the attention of a manufacturer of a flat top bifocal, we have not only been threatened with a law suit, but a great deal of pressure has been brought to bear on some of our customers, to the extent that some of them have threatened to discontinue their business with us on our regular line if we do come out with this new bifocal.

We are not concerned about a law suit, nor any unfair tactics which any of our competitors might use to discourage us, but we are vitally interested in serving our customers in a way that will do the most good to the greatest number, and your cooperation in this matter at this time will help the situation considerably. We are enclosing a questionnaire, and we are asking that you give this matter serious consideration and fill out the questionnaire and return it to us as early as possible in the enclosed self-addressed envelope.

Very truly yours,

TITMUS OPTICAL COMPANY, INC.,  
By: E. H. TITMUS.

EHT:S.

509 QUESTIONNAIRE OF TITMUS OPTICAL COMPANY CONCERN-  
ING OUR BONVUE C BIFOCAL WITH FLAT TOP SEGMENT

Do you favor our manufacturing and selling a flat top bifocal?—	Yes. No.
Are you purchasing bifocals with flat top segments?—	Yes. No.
Would our Bonvue C Bifocal with flat top segment be of help to you in your business?—	No. Yes. No.



Would you be willing to pay the same price for our Bonvue C Bifocal as charged by another well known manufacturer of bifocals with flat top segments? ----- Yes.  
 Do you prefer a semi-finished pitch polish or only a ground surface? ----- No.  
 About what quantity of our Bonvue C Bifocals with flat top segments could you use per month? (Approximately) ----- Pairs.

**Remarks:**

We trust you will answer the above questions, sign and return same to us at your earliest convenience, as your reply will have a great bearing on our decision regarding this matter at this time.

Use the enclosed self-addressed envelope.

Name -----  
 Address -----

[Telegram]

510

cc sent to all salesmen 4-8-40

**POSTAL TELEGRAPH**

We presume you have received Titmus circular letter of March twenty-eighth 17940 with attached questionnaire. We hope you will answer this questionnaire fully and completely. We do not suggest any answer to be made as we want you to give Titmus your frank candid and honest opinion which we think will be for the interest of the industry.

UNIVIS LENS COMPANY.

511

*Exhibit 21*

**AFFIDAVIT**

STATE OF OHIO,

*County of Montgomery, ss:*

I, Myer H. Stanley, being duly sworn and state as follows:

1. That I am President of the Univis Corporation and Secretary of the Univis Lens Company, both having their principal place of business at Dayton, Ohio.
2. That I have been associated with these two companies in various capacities where I have been familiar with the policies of the companies from their inception.
3. That the undersigned makes this sworn statement of his own free will and without any promise of immunity.
4. That I am familiar with the contracts that have been entered into by the above companies of which I am an officer since the inception of those companies and I am also familiar in a general way with competitive conditions which have existed in these industries from the time that they have existed.

512 5. That when the above companies first entered into the business of manufacturing, importing and selling bifocal eyeglass lenses, that we were confronted with the problem of competition and the competitive methods that we could expect from American Optical Company, Bausch & Lomb and possibly from the Shuron Optical Company, as these were the leading and dominating factors in the eyeglass industry at that time and they still are. We investigated the patent situation as to the ownership of patents by those companies and the possibility of their competing with us by using these patents as competitive weapons through litigation. We also found that the American Optical Company owned or controlled or dominated a large proportion of the outlets for eyeglass lenses through which we might sell.

It will be understood in this industry that the blanks are manufactured by the manufacturer; then these blanks are sent to those classes of the trade that grind the blanks to the particular prescription of the wearer of the ultimate eyeglass lenses; that these prescriptions are the result and skill of the knowledge of a physician or an optometrist who deal with the patient, diagnose his needs for eyeglasses and write the prescription according to which the lens is ground. In our business we found that the quality

513 of the lens as finally placed upon the face of the wearer depended first, upon the manufacturing; second, upon the grinding of the lenses by those elements of the trade who bought the blanks from us and ground them according to prescription; and upon the skill of the optometrist or physician or both who had a part in the fitting and writing of the prescription. The completed manufactured product of a bifocal eyeglass lens is unusual in that it cannot be manufactured at the plant of a manufacturer but must be manufactured by these stages through submanufacturers or handlers who also have some commercial relationship in selling it.

6. The effect upon the wearer ultimately is in proportion to the quality of the lens as ultimately fitted to the wearer. The above channels of manufacture and distribution all have a part in the maintenance of the quality of the resulting bifocal eyeglass lenses.

7. The companies with which I am associated determined from the first that the only hope of competition with the large competitors already firmly entrenched in the field, was to be able to produce a quality lens of such superior quality plus the novel patented features, that we could compete not only with the commercial organizations in the field but retain or secure the independence left in the field as our channels for manufacturing and sale. In order to do this we had to have a sufficient margin in our price

514. in order to be able to maintain the quality by supplying the highest grade of first quality lenses without placing in the

trade any second or third grade lenses which had often been the custom in this trade at the time we went into it or before that time.

Therefore we determined upon a policy of licensing whatever distributors, who were also grinders of lenses, and whatever retailers who are grinders of lenses according to prescriptions who were open and available to us and who were not monopolized by competition, to wit: primarily American Optical Company and Bausch & Lomb. In order to control the quality of our product until it got to the wearer we had only one requirement and that is that the Licensee should be equipped with machinery and facilities of both personnel and skill to adequately service the lenses in their manufacturing and fitting, but otherwise we would license any established qualified person, firm or corporation in these fields. The only exception to the foregoing has been that we have found that where price cutters existed they habitually cut prices and that such persons, firms or corporations were not interested in quality.

8. That following this policy we have between 5,000 and 6,000 Licensees of all kinds and classes. This number includes wholesalers or distributors, finishing retailers and retailers.

515 9. That we have found that this system of contracts as set forth on the attached Exhibits A, B, C were essential for us in order to be able to compete as we had to have something to offer the trade in competition with American Optical Company and Bausch & Lomb. We have been subjected by the American Optical Company to long, expensive, and protracted litigation both in the United States Patent Office and in the United States Courts and we have finally arrived at a settlement in that litigation in order to eliminate any further heavy expense by entering into a cross license under date of August 8, 1934; with the American Optical Company, a voluntary association of the State of Massachusetts, and American Optical Company, a Massachusetts corporation. This agreement was supplemented by a supplemental agreement dated August 8, 1934. The purpose of these agreements and in particular the provision in paragraph 4 of the main agreement was to protect us against the competition of American Optical Company, particularly as to unfair competition which would result if they were able to supply a flat top insert in a bifocal eyeglass lens which had become identified with our source of manufacture in the trade in the nature of a trade-mark. We agreed not to employ the curved top which had become identified with them. Without this agreement we would have been put out of business by the American Optical Company because after we had given them a license they would have  
516 duplicated our identical form of insert without any control over quality and with their large distributing organization and without any control over competitive price, we would

have been at the mercy of the American Optical Company. In our business, where we had established our whole reputation upon the quality, the supply by American Optical Company of lenses appearing to be the same as ours, but of lesser quality would have ruined us in the trade and with the public.

From my long knowledge of what we have experienced from the American Optical Company and Bausch & Lomb, I wish to state that if we had to continue without our patents and license contracts and with the burden of continued litigation with the American Optical Company that we would have been out of business some years ago. At one time we had some seven (7) suits existing between the American Optical Company and ourselves at the time of entering into the above contract on August 8, 1934. The aforementioned litigation is summarized Exhibit D.

10. With the large number of controlled distribution outlets of American Optical Company the existence of threats of litigation or litigation was magnified many times in its effect upon trade because of the distribution through these channels of such information, which made it extremely difficult for us to compete as we were under the handicap of continuous gossip of litigation.

517 11. If the American Optical Company and the Bausch & Lomb Company had not had and do not now have the monopoly on a very large proportion of the finest and most successful commercial outlets for bifocal eyeglass lenses, then a system such as we have would not be nearly as necessary, if necessary at all, because there would then be free competition for outlets in the trade, but when a substantial portion of the outlets are monopolized it leaves a difficult competitive situation, because what is left has to be divided for distribution purposes amongst other manufacturers.

MYER H. STANLEY.

Subscribed and sworn to before me, a Notary Public in and for Montgomery County, Ohio, this 16th day of February 1940.

o[SEAL]

F. W. SCHAEFER,

*Notary Public, Montgomery County, Ohio.*

My commission expires April 10, 1942.

518 Jurisdiction: United States District Court for the District of Delaware (Wilmington, Del.).

Number: Equity No. 928.

Plaintiffs: American Optical Company, a voluntary association doing business at Southbridge, in the Commonwealth of Massachusetts, et al.

Defendant: Willard F. Davis, Inc., a corporation organized under the laws of the State of Delaware.

Subject of Suit: Tillyer Patent No. 1,544,612, July 7, 1925;  
Tillyer Patent Reissue No. 17,887, Nov. 25, 1930.

519 Jurisdiction: United States District Court, District of  
Delaware (Wilmington, Del.).

Number: No. 929—in Equity.

Plaintiffs: American Optical Company, a voluntary association,  
doing business at Southbridge, in the Commonwealth of Massa-  
chusetts, et al.

v.

Defendant: The Univis Corporation, a corporation organized  
under the laws of the State of Delaware.

Subject of Suit: Tullyer Patent 1,544,612 of July 7, 1925 (as-  
signee: American Optical Co.); Tillyer reissue patent No. 17,887 of  
Nov. 25, 1930 (assignee: American Optical Co.). Particularly  
claim 7 of original patent and claims 7 and 8 of reissue patent.

520 Jurisdiction: District Court of the United States, West-  
ern District of New York (Buffalo, N. Y.).

Number: Equity No. 1775.

Plaintiff: American Optical Company, a voluntary association  
doing business at Southbridge, in the Commonwealth of Massa-  
chusetts, et al.

v.

Defendant: Shuron Optical Company, Inc. (Geneva, N. Y.).

Subject of Suit: Tillyer Patent 1,544,612, July 7, 1925; Tillyer  
Reissue No. 17,887, Nov. 25, 1930.

521 Jurisdiction: United States District Court, District of  
Massachusetts (Boston, Mass.).

Number: No. 3446—in equity.

Plaintiffs: United Kingdom Optical Limited and Univis Cor-  
poration

v.

Defendants: American Optical Co. et al.

Subject of Suit: Watson and Culver No. 1,729,654 Oct. 1, 1929.



522 Jurisdiction: United States District Court, Southern District of Ohio, Western Division (Dayton, Ohio).

No. 347—in Equity.

Plaintiffs: The Univis Corporation and United Kingdom Optical Co., Ltd.

v.

Defendant: American Optical Co. et al.

Subject of Suit: Stanley Patent No. 1,899,777, Feb. 28, 1933.

523 Jurisdiction: United States District Court, Southern District of Ohio, Eastern Division (Columbus, Ohio).

Number: No. 918—in Equity.

Plaintiff: The Univis Corporation.

v.

Defendant: American Optical Co. et al.

Subject of Suit: Clement Patent No. 1,401,238, Dec. 27, 1921.

524 Jurisdiction: United States District Court, Southern District of Ohio, Western Division.

Number: No. 759—in Equity.

Plaintiffs: United Kingdom Optical Co. Ltd. and The Univis Corporation.

v.

Defendant: W. N. Benedict Company and American Optical Co. et al.

Subject of Suit: Courmettes Patent No. 1,160,382, Nov. 16, 1915.

526

*Exhibit # 22*

AUGUST 28, 1939.

WILSON C. ATKINSON, O. D.,

308 Pittsburgh Life Bldg., Pittsburgh, Pa.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in August 1931 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return any Univis material you have in your possession.  
We regret the arrangement did not serve its intended purpose  
more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, *Vice President.*

LVB: Mc.

Reg No. —

V. H. H. shopping job shows price cutting: \$8.00 lens and temple  
repair for \$7.50 total. Canceled per J. R. S.

527

AUGUST 28, 1939.

Same letter to B. K. Elliott-Co. and Geo. Haas.

TRIANGLE OPTICAL CO.,

*Pittsburgh, Pa.*

GENTLEMEN: Please remove from the Univis list the name of  
Wilson C. Atkinson, listed under Pittsburgh, with branch at  
Homestead, Pa. His Univis license has been terminated.

Yours very truly,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_

LVB: Mc.

Copy: MTS.

VHH.

528

DR. WILSON C. ATKINSON, OPTOMETRIST,

318 PITTSBURGH LIFE BUILDING,

SIXTH STREET AT LIBERTY,

*Pittsburgh, Pa., Sept 8, 1939.*

Mr. L. V. BROWN, *Vice President,*

*Univis Corporation, Dayton, Ohio.*

DEAR SIR: Your letter of August 28th at hand. Would have  
answered same had I not been away from my office.

I have had a talk with Ralph Grodstein, of the Triangle Optical  
Co., regarding the matter, and he showed me a letter from your  
firm in which it makes certain allegations that are without founda-  
tion or fact and casts a reflection upon my professional integrity,  
the same of which I have always zealously guarded against such  
suspensions as you indicate in your letter to the above firm.

Unless you can produce proof that will stand a test of judicial  
digest, I shall begin immediate action compelling you to do so.  
There is in my profession, in and around me, that are jealous of my  
success and who would not stop to stoop at making assertions that  
might hurt me or attempt to hurt me, if they felt it would further

their ends. I make this judgment predicated upon statements that are brought to me from time to time by persons who become my patients. Imaginations creating conversations by certain adults, are on a par with children between the age of four and six, thereby injuring the reputation when believed by other adults of men and persons who wholly do not deserve such embarrassment.

Trusting that you will give this your immediate attention, I remain

Sincerely yours,

WILSON C. ATKINSON.

Registered mail.

629 Roy Marks. (Albert Lea).

L. V. Browne.

9/13/39.

Re W. C. Atkinson, Homestead, Pa.

His license was cancelled with a regular notification letter that "license had failed to develop satisfactorily." Previous to cancellation there had been a shopping test at Homestead on account of reported leaks. Arranged for by VHH. On a call for duplication of 1/2 pair "C" style Univis and a new temple, the Atkinson establishment gave a receipt for \$2.00 with balance due of \$5.50; total \$7.50; whereas minimum for lens alone should have been \$8.00. Atkinson wrote threatening to sue, saying that he had been shown a letter that Mr. Grodstein wrote which Atkinson claimed reflected on him.

The above is only for your own information. It will be best for you to say that the matter is one with which you had nothing to do and no knowledge of.

Regards.

LVB:Mc.

530

Exhibit No. 23

531

SEPTEMBER 6, 1939.

DR. R. R. GRODSTEIN.

*Triangle Optical Company,*

*509 Clark Building, Pittsburgh, Pennsylvania.*

DEAR RALPH: This acknowledges your letters of September fifth, covering Dr. Atkinson's removal as well as the matter of Dr. LeVine.

Dr. Atkinson's removal was not entirely for lack of use, but the more serious (if possible) matter of policy violation. There

has been a leak in Univis service in your territory affecting good Univis licensees, and shopping efforts on our part revealed that Dr. Atkinson was the guilty source of supply. As a result his license was cancelled, and we are not interested in considering an application from him at least for the present. We believe it necessary and advisable that he realize the penalty for violation of contract, and therefore we would want no application submitted at least for several months.

Now as to Dr. Le Vine. Our reports indicate that he was on the undesirable list, this based upon reports secured in December of last year. It may be quite possible, Ralph, that this situation has changed sufficiently to warrant a reconsideration of Dr. Le Vine's application, and we will therefore immediately make another check-up. At the same time we suggest that you get a new license application from Dr. LeVine together with an expression as to the quantities of Univis he will prescribe if granted a license. This information will be helpful to us in making a decision and I can assure you that if at all possible we will work with you in this matter.

Yours very truly,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN.

k.

Copy to M. T. Silverman.

TRIANGLE OPTICAL CO.,  
WHOLESALE MANUFACTURERS,  
Pittsburgh, Pa., September 5, 1939.

UNIVIS LENS Co.  
Dayton, Ohio

GENTLEMEN: I note from a letter dated August 28th that the name of Dr. W. C. Atkinson has been removed from the list of Univis licensees.

I have recently spoken with him and I think that we can get him to start using Univis again. He has a son who recently graduated from college and is very much interested in Univis lenses, so if I can get him to promise at least five pair per month, would he be reinstated?

Awaiting your reply, I am,  
Sincerely,

TRIANGLE OPTICAL CO.,  
RALPH.

R. R. Grodstein.  
JC.

533

SEPTEMBER 14, 1939.

DR. WILSON C. ATKINSON,  
318 Pittsburgh Life Building, 6th Street at Liberty,  
Pittsburgh, Pennsylvania.

DEAR DOCTOR ATKINSON: Your letter of the 8th has been handed to the writer.

In endeavoring to locate sources supplying Univis lenses at prices less than those established by contract, the information was furnished our field representative that your Homestead office was such a source of supply.

Your letter offers no explanation of the price quoted on patient Martin's Univis duplication.

We trust this is the information you desire.

Very truly yours,

THE UNIVIS LENS COMPANY,  
V. H. HANCOCK.

k.

534 DR. WILSON C. ATKINSON, OPTOMETRIST,  
318 PITTSBURGH LIFE BUILDING,  
SIXTH STREET AT LIBERTY,  
Pittsburgh, Pa., Sept. 15, 1939.

THE UNIVIS LENS COMPANY,  
Dayton, Ohio.

Att. Mr. V. H. Hancock.

GENTLEMEN: Your letter of Sept. 14th, replying to mine of the 8th, at hand. I do not consider this an answer to my letter and will not accept such a weak attempt to justify your letter regarding me, to Mr. Ralph Grodstein.

You call my attention to a price quoted on one Martin's Univis duplication, and state that I had offered no explanation of that transaction to you. There was a case of a young lady coming into my Homestead office, stating that they were from New Orleans and wanted a new lens inserted in an old Zyl. frame, who stated to my son that she could get the same lens duplicated for \$4.50, and came back later and decided to leave the job at our office, for a price estimated by my son to be about \$7.50, but my son informs me that he had told her positively that he was not sure of that price, but that his father would set the price upon completion of this job.

For your information, I asked the wholesale house, with whom I had left the order for this lens duplication, to have the same returned to me, unfinished, if the factory had not started work on the job. They then wrote your firm, as I instructed, and the same was returned to me after some delay, and which now remains in our drawer as unfinished, with a notation, "that under no



circumstances would we complete the job until the party had paid the sum of \$8.00 for this lens. It appears to me that your Company, through its "spotter" and representative, went off half-cocked, and creates in my mind—and will in others as well—after this matter has been properly aired, that your company do not properly weigh their judgments under any and all circumstances.

I will await a period of ten days for a better explanation and a more explanatory one, justifying your letter with relation to my integrity, to Mr. Ralph Grodstein of the Triangle Optical Co., of this city, before I take action in the Federal Courts here against your organization, for such damages that I feel I have sustained because of your cancellation of my Univis license, and your letter explaining the reasons thereof to the Triangle Optical Co. of this city. I had been looking forward to an increased business in Univis lenses after my son had received his State License, as he had been "sold" on Univis during his course as a student at Northern Illinois College of Optometry, and I regret very much this misunderstanding.

Sincerely yours,

WILSON C. ATKINSON.

535

SEPTEMBER 21, 1939.

DR. WILSON C. ATKINSON,

*319 Pittsburgh Life Building, Pittsburgh, Pennsylvania.*

DEAR DOCTOR ATKINSON: Thank you for your letter of the 15th, which just arrived last evening.

Naturally, you as well as we are pleased that your office now is cognizant of correct quotations upon Univis lenses.

The interpretation put upon the printed receipt-form headed Dr. Wilson C. Atkinson, Optometrist (in our possession) and reading, Date 8/21/39. Received from E. E. Martin \$2.00. Bal. \$5.50 for a new Univis lens and temple repair could be only that of a source of supply at prices lower than those established. You understand that, of course.

If you so desire, the writer can and will be pleased to send a copy of this and your letter to Mr. Grodstein.

Our Mr. Roy Marks knows your Son from N. I. C. and has spoken most highly of him, and we know you both will enjoy being associated.

With best wishes, we remain

Very truly yours,

THE UNIVIS LENS COMPANY,  
V. H. HANCOCK.

k.

cc: Roy Marks.

536

[Telegram]

## POSTAL TELEGRAPH

Collect.

L. V. BROWNE, *La Crosse, Wis.*

Please rush me Albert Lea all particulars on price cutting case of Atkinson Homestead, Pa. Understand they filed suit and appealed to me. I know son well at NIC.

Regards.

ROY MARKS.

537

SEPTEMBER 6, 1939.

BEITLER-McKee,

*500 Century Building, Pittsburgh, Pennsylvania.*

GENTLEMEN: This will acknowledge your letter of September fifth. The order B-07090 was, as we advised you, a shopping order used to determine an illegitimate leak in Univis service in your territory. The investigation resulted in our cancelling the license of Dr. Atkinson, and the matter is, so far as we are concerned, closed. Your wishes regarding this particular order have been carried out and the order stands cancelled. We are sorry for any inconvenience that may have been caused you, but we are sure that you appreciate the importance of our following through on any violations of this sort.

Yours very truly,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, *President.*

k.

Copy to M. T. Silverman.

538

BEITLER-McKee OPTICAL CO.

500 CENTURY BUILDING,  
*Pittsburgh, Pa., Sept. 6, 1939.*

UNIVIS LENS CO.,

*Dayton, Ohio.*

GENTLEMEN: In reply to your letter regarding our order B-07090, please be advised to return this to us immediately as our customer no longer wishes to have anything to do with it.

We are very much displeased in the way this order was handled as Mr. Atkinson has been calling here every day for the last week and half trying to find out when he might expect this order, and

not caring to divulge the information, told us per telephone call, it left us in very hot water.

Thanking you for your immediate attention.

Very truly yours,

J. E. CONNELLY,  
BEITLER-McKEE OPTICAL Co.

JEC:EB

JEC:RB.

541

AUGUST 28, 1939.

DR. MURRAY LENARD LINCOFF,

240-242 E. Eighth Avenue, Homestead, Pennsylvania.

DEAR DOCTOR LINCOFF: In the absence of Mr. Hancock from this office the writer has been handling the shopping job placed in accordance with your letter of the twenty-first. As a result of this investigation we are convinced of the advisability of terminating the Univis license of Dr. Atkinson in both Pittsburgh and Homestead. Accordingly, proper notice of the cancellation is being sent from the Univis Corporation today.

We extremely appreciate your cooperation in this instance and we feel that the move being made will further protect the Univis picture in your territory.

We are glad to be of service to you and hope that you will agree with our decision.

Yours very truly,

THE UNIVIS LENS COMPANY,  
J. R. SILVERMAN, *President.*

k.

Copy sent to Hancock.

542

Mr. V. H. HANCOCK,

Mr. J. R. SILVERMAN,

New Orleans, La.

8/24/39.

DEAR RAY: The shopping job of Lincoff was ordered this morning by Beitler-McKee. I just finished talking to Jim Kotva who explained that the order was received from Atkinson. I do not quite follow the reasons for this shopping job inasmuch as Atkinson is a Univis licensee. Is it the question of his violating resale price? In any event you have the information and I would like to know what disposition to make with the order, and the reason for the shopping.



Post Office Department  
REGISTERED ARTICLE  
8970  
INSURED PARCEL

DAYTON,  
OHIO





You are about one week late on the Visionez pamphlet as we received some 10 or 12 of these last week. Immediately upon their receipt I went to St. Cloud, Minnesota, and affected an agreement with Lantz whereby he will withdraw the offer to make the flat top bifocal but will continue to make both the Ful Vue and the Panoptic imitation. I told him that these latter two were not directly our problem but the problem of American Optical Company and the Panoptic Company. As a result of our conversation a letter was sent to all of the jobbers who received a pamphlet and Hennessey has no doubt received his letter by now. Pretty fast action in this case and I hope friend Lantz keeps his word. A rather interesting observation is the fact that he has been making the Panoptic and Ful Vue imitation for over 4 years, and the best anyone can get from either company is "that they are working on it." It is also interesting that this chap's dispensing office looks like a B & L branch since the walls are covered with Orthogon, Loxit, Softlite and other licenses as well as all the B & L display material. You figure it out.

Copy of this letter sent to V. H. at Houston, Texas.

545

AUGUST 4, 1939.

DR. MURRAY LENARD LINCOFF,

*240 East Eighth Avenue, Homestead, Penna.*

DEAR DOCTOR LINCOFF: Pursuant to our telephone conversation of Tuesday, under separate cover am sending to you a pair of Univis "C" lenses (the left lens missing) which I wish you will have left at the discussed retail establishment.

Your secretary or whoever does the shopping will have the left temple repaired, also, and will leave a two dollar deposit.

The Rx is in the name of E. E. Martin, 8133 Hickory St., New Orleans, La., who can very easily be visiting in Homestead.

Please advise the writer just as soon as you will have left the glasses to be repaired. Do not call for them until you will have heard from us.

With kindest regards and best wishes, and with the hope that every presbyope will be fitted with Univis D-19's, we remain

Very truly yours,

THE UNIVIS CORPORATION.

VHH:MM.

Copy to M. T. S.

546

DR. WILSON C. ATKINSON, OPTOMETRIST

318 Pittsburgh Life Building, Sixth Street at Liberty, Pittsburgh, Pa., Atlantic 2618.

131½ East Eighth Avenue (Near Amity), Homestead, Pa., Homestead 2387.

Date 8/21 1939.

Received from E. E. Martin, \$2.00; Bal. 5.50.

Dr. ATKINSON,

(Signed) Per J. T. J.

549

DR. MURRAY LENARD LINCOFF, OPTOMETRIST,

240-242 EAST EIGHTH AVENUE,

Homestead, Pa., August 21, 1939.

UNIVIS LENS CORPORATION,

*Dayton, Ohio.*

Attention V. H. Hancock.

DEAR SIR: Enclosed you will find a receipt for two dollars (\$2.00) which was left as a deposit at the office of Wilson C. Atkinson, 134½ E. 8th Avenue, Homestead, Pa.

The Univis "C" job was left at his office August 21, and was promised for August 23. The price on this lens and temple repair quoted by Dr. Atkinson was \$7.50.

Thanking you in advance for your cooperation and speedy action in this matter, I am,

Very truly yours,

DR. M. LENARD LINCOFF.

Dr. M. Lenard Lincoff.

M1: rj.

Enclosure.

550

*Exhibit 24*

OCTOBER 18, 1938.

DR. E. G. BARNET,

*Wisconsin Rapids, Wis.*

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in November 1934 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

**UNIVIS**  
TRADE MARK  
 A PATENTED DESIGN REGISTERED IN U.S.A.  
**THE MODERN BIPOCALE**

Supplied to:  
 Name C. E. Miller  
 Address 123 Hickory New Orleans

Supplied by: Carroll Opt. Co. Rx No. R  
UNIVIS C. S. L. ADD OV. +2.00  
(Lenses)

**Certificate of Quality**

That I guarantee that the lenses provided for the purpose of the patent issued to the Univis Lens Company have been made from genuine Univis Glass. Manufacture is by most advanced scientific methods. Completion of individual prescription is guaranteed to selected establishments named by The Univis Corporation.

Patented features developed by Univis when they are incorporated in Univis Lenses exclusive-ly. The wearer receives the important benefits of more efficient vision, with increased comfort. In all an ordering a Univis Certificate of Quality is necessary to replace broken Univis lens.

"Nothing has been so far so good enough for your eyes."



Kindly return the metal, certificate and other Univis material supplied to you.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_,  
Vice President.

LVB:MC.

Reg. No. —.

Copy: Benson and Central States.

"Remove Central States and Benson request removal because of alleged price cutting activities."

R: Marks 10/8/38.

551

E. G. BARNET, M. D.  
PRACTICE LIMITED TO DISEASE AND SURGERY  
OF THE EYE, EAR, NOSE AND THROAT,  
Wisconsin Rapids, Wis., 10-19-38.

L. V. BROWN,  
Univis Corp.

Your letter received about termination of Univis licensing contract. "I am quite curious as to reason for same—I know that I do not sell these lenses for less than 16.00 per pair, the price set by you. I have discontinued doing business with the Benson Optical Co. Is this the reason. Unless you write me reason by return mail I shall bring this matter up at the next meeting of our Society of Optthal & Ota which will be held in Rochester, Minn., Nov. 11th, advising all there to stop selling Univis as they may be cut off for no reason at all. In fact I am entitled to an "Open letter to Editor" to be published in the Jour. of Amer. Med. Assoc. and I will have one published unless reason for your action is sent me.

Sincerely yours,

E. G. BARNET, M. D.

552

THE UNIVIS CORPORATION,  
Dayton, Ohio, October 22, 1938.

E. G. BARNET, M. D.,  
Wisconsin Rapids, Wis.

DEAR DOCTOR: Referring to your letter of the 19th inst., we suggest that you supplement the statements in your communication with the following information:



The total number of pairs of Univis you have sold this year, listing same by months; the names of wholesalers from whom purchased, and the prices at which they were retailed in each instance.

This data is desired in connection with further investigation of the matter by our Field Manager in charge of the territory.

If it develops that the termination of the contract that we had with you was brought about by erroneous information, steps will be taken with a view to entering into new contract if mutually agreeable.

Sincerely yours,

THE UNIVIS CORPORATION,  
By L. V. BROWNE.

LVB:MC.

553 Roy Marks.  
L. V. Browne.

10/22/38

Re E. G. Barnet, M. D., Wis. Rapids

We cancelled E. G. Barnet, M. D., on your report that Benson and Central States requested his removal on account of alleged price-cutting activities.

I am enclosing several copies of his letter, for your convenience if you need them to pass on to Benson in correspondence about the matter.

I have been very cautious in replying, so that if he shows the letter he has nothing more than our request for additional information. I don't know what there is to support the statement of his price-cutting activities—and whether it included Univis directly or indirectly.

If it can be shown that M. D.'s kicked about him, that would be fine for use at the convention if he talks about it there. I suppose Benson is "clean" in this case. If so, they could give the real "low-down" to some of the friendly M. D.'s who will be at the convention.

Got any particular slant?

LVB:MC.

554

Roy Marks.  
L. V. Browne.

10/29/38.

Re E. G. Barnet, M. D., Wisconsin Rapids, Wis.

Following from him in reply to our letter of Oct. 22nd:

Month	Wholesaler	No. prs. Univis sold	Price
Feb.	Belgrad-Spero	2	\$22.00
			22.00
Mar.	Belgrad-Spero	1	22.00
Apr.	Belgrad-Spero	1	20.00
May	Belgrad-Spero	1	20.00
June	Belgrad-Spero	2	22.00
			21.00
July	Belgrad-Spero	2	24.00
			28.00
Aug.	Belgrad-Spero	2	18.00
			23.00
Sept.	Belgrad-Spero	1	8.00
Oct.	Belgrad-Spero	1	18.00

"There may be one or 2 pairs bought from Benson Opt. Co. during that time but when I discontinued doing business with them I threw out their Rx book, so I would have to go through 5000 records to find them which I am far too busy to do."

While that isn't many—still it is use and "inactivity" could not be used as ground for cancellation. If you can get a look at Belgrad-Spero's invoices to him they may show that the retail prices he lists for the jobs were *indirect* price cuts on Univis on account of the mountings or frames supplied. We will not write Dr. Barnet pending further developments.

LVB:MC.

555

COMPANY CORRESPONDENCE, THE UNIVIS LENS CO.

(Confine each communication to one subject)

To L. V. Browne.

From R. Marks.

Place Chgo. Date 10/29/38.

Re E. G. Barnet, M. D., Wisconsin Rapids, Wisc.

I have made a lot of inquiring regarding this chap and find that we were entirely justified in taking him off the list. No'e of our jobbers, UHLCo, Benson, CSO Milwaukee and Belgrad-Spero and none of them do business with the lad. Not only that, they all tell

the same story—that he is a chisler of the first water and that he shouldn't have a license under any circumstances, I learn from Grell, UHLCo's Wisconsin salesman, that the man is intensely disliked all the Wisconsin Medical men—especially the secretary of the OPHTHAL. Society. He also says that it will be not trouble at all to have the society clamp down on him in case he gets tough.

I gat'er from Lindmark's letter, which you read, that he will also cooperate in blocking anything Barnet might do. Anyway, from the looks of things, it might not be a bad idea to let Barnet shoot his face off as it would build up the doctors faith in Univis protection—In view of the fact that they don't think so very much of him.

Anyhow, I am sure that we can ignore him and let matters rest.  
Regards.

ROY.

556

Exhibit 25

557

MARCH 16, 1938.

Dr. S. W. FOUTS,

*13½ W. Third St., Peru, Indiana.*

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in September 1931 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return the metal certificate and other Univis material supplied to you.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_, Vice President.

LVB:MC.

Reg. No. —

Copy: Paramount.

"Remove from list. Ft. Wayne Opt. acct. Cheap—Cheap—  
Cheap. Used 16½ prs. in 7 yrs."

VHH 3/10/38.

558

MARCH 16, 1938.

PARAMOUNT OPTICAL CO.,  
Indianapolis, Ind.

GENTLEMEN: Please remove from your list of Univis licensees the following names:

Wm. D. Elson, Indianapolis, Ind.

S. W. Fouts, Peru, Indiana.

Copies of letters revoking their licenses are enclosed for your information.

Yours very truly,

THE UNIVIS CORPORATION.

MCD:M.

559

DR. S. W. FOUTS, OPTOMETRIST,  
131½ West Third Street,  
Peru, Indiana, April 14, 1938.

UNIVIS CORPORATION,  
Dayton, Ohio.

DEAR SIR: Recently I received notice that I had been dropped as a Univis Licensee. No reason was given. After talking with Mr. Olds of Ft. Wayne I feel I am justified in asking an explanation for as I explained to him I have absolutely kept my part above reproach and can prove it.

These facts I am submitting. It is true that at one time I was not stressing Univis but in the past two years since getting to bifocal age I have been very enthusiastic about them and had adopted Univis for personal use in my family. Naturally I was quite upset about this dismissal and even tho you deny me the privilege of dispensing them I still have high regards for your lenses. Mr. Olds said he would report to you concerning our talk.

Very Truly Yours,

S. W. FOUTS.

560

Superior Rx Service. Wholesale Only. Merchandise of  
Known Merit.

FOX OPTICAL COMPANY,  
303 LEMCKE BUILDING,  
Indianapolis, Indiana, Oct. 10, 1938.

THE UNIVIS LENS CO.,  
Dayton, Ohio.

Atten: Mr. L. V. Browne.

DEAR SIR: Our representative, Mr. James V. Fox, reports that he has had two complaints from very good customers in Peru, Indiana, objecting to a Univis license having been reinstated to S. W. Fouts.

Their objection seems to us as well-founded for the reason that Dr. Fouts has in the past few years been quite a cut-price artist and while we have no definite knowledge or proof that he has violated the Univis contract, he definitely cuts prices on the general line of lenses, frames, etc.

This particular case it seems to us bears investigation.

Very truly yours,

ELMER J. FOX.

FOX OPTICAL COMPANY.

EJF:HV.

561

DR. O. B. ANDREWS, OPTOMETRIST,  
101½ SOUTH BROADWAY,  
PERU, INDIANA, October 12, 1938.

UNIVIS LENS CO.,  
Dayton, Ohio.

GENTLEMEN: Quite sometime ago Mr. Marks was here and told me that you were taking Dr. S. W. Fouts license away from him and that I would have no more worries from that source. Now I understand you have given him his license back.

He knocks Univis to everyone and just this morning Fred Counts, of the Paramount optical Co., told me that Fouts told him that Univis was no good and that he had so much trouble with them and that he was pushing Wide Site A.

Now this makes it hard for me as I have been using Univis altogether, but if you are going to allow him to use it too and knock it whenever he can, I will have to switch to Pan Optik.

Dr. Fouts is worse than any of the cheap cut price houses that the Board is trying to get rid of in the state.

Please let me know what you intend to do in regards to him using Univis.

Very Truly Yours,

Dr. O. B. ANDREWS.

Dr. O. B. Andrews.

562

October 13, 1938.

FORT WAYNE OPTICAL CO.  
Fort Wayne, Indiana.

Att: Mr. J. H. S. Olds.

GENTLEMEN: We are sorry that the reinstatement of S. W. Fouts, O. D., as a licensee has not worked out satisfactorily in any respect whatever. In addition to the unfavorable reports from various sources there is the fact that he has not made good his promise to push Univis—using only one pair in September and only 4½ pairs total previous to that since his relicensing.



The situation makes it advisable to cancel the license, and we are sending notification to him today. Very sorry.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_.

LVB:NC.

Copy: Marks.

563

OCTOBER 13, 1938.

S. W. FOUTS, O. D.,

131½ W. Third St., Peru, Indiana.

DEAR DOCTOR: We regret that contract arrangement with you has failed to serve the purpose satisfactorily.

Therefore, it is appropriate to discontinue same.

Accordingly, we notify you, in accordance with the clause marked "Third" in the contract, that the Univis license issued to you is hereby cancelled.

Please return Univis materials with which you were supplied.

Yours truly,

THE UNIVIS CORPORATION,

\_\_\_\_\_, Vice President.

LVB:MC.

Reg. No. —.

Copy: Ft. Wayne Opt.

564

Exhibit 26

565

JULY 1, 1940.

J. F. NEWBY, O. D.,

First Natl. Bank Bldg., Pullman, Wash.

DEAR DOCTOR: Replying to your letter of the 26th, formal notification was sent on June 1st to all Univis wholesalers (main offices and branches) to remove the name referred to from the Univis license list—according to our procedure when a licensee is cancelled.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_.

LVB:Mc.

566

DR. J. F. NEWBY, OPTOMETRIST, ORTHOPTIST,

June 26, 1940.

THE UNIVIS CORPORATION,

Dayton, Ohio.

DEAR SIR: Thank you for the action taken to correct the situation here in Pullman regarding the sale of Univis lenses at less

than the established prices. Have the wholesale houses supplying Univis lenses in Seattle, Portland, Tacoma, Walla Walla, and Spokane been notified to this effect?

Assuring you again that cooperation in this instance is greatly appreciated.

Very truly yours,

J. F. NEWBY, O. D.  
Dr. J. F. Newby.

JFN:nh.

567

MAY 28, 1940.

W. F. TAYLOR, O. D.,

202 East Main St., Pullman, Washington.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return any Univis material you have in your possession.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_, Vice President.

LVS:Mc.

Reg. No. —.

Copy: Riggs, Spokane & S. F.  
Salesman.

568

MAY 28, 1940.

J. F. NEWBY, O. D.,

281-220 First Natl. Bank Bldg., Pullman, Washington.

DEAR DOCTOR: We have given consideration to your letters regarding Dr. W. F. Taylor. Offers to supply Univis lenses at less than the established prices are violations of contract, as well as actual sales.

While you and we know that patients sometimes make statements that are not accurate, we are satisfied that you consider the sources of your information absolutely dependable.

In order to decisively correct the situation we are cancelling Dr. Taylor's Univis franchise today. The notification letter going to him today makes no reference to complaint—simply on

the basis that the license has not served the intended purpose satisfactorily.

Thanking you for your interest in and cooperation.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_.

LVB:Mc.

Copy : salesman.

569

MAY 28, 1940.

MR. PAUL G. DAVIES,  
*Riggs Optical Co.,  
Spokane, Washington.*

DEAR MR. DAVIES: We are enclosing for your information copy of letter to Mr. N. Stevens, and also copy of our notification to W. F. Taylor, O. D., cancelling his Univis franchise.

Thank you for your co-operation in this matter.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_.

LVB:Mc.

Enc.

Copy : salesman.

570

MAY 28, 1940.

MR. N. STEVENS,  
*Riggs Optical Co.,  
Flood Bldg., San Francisco, Calif.*

DEAR MR. STEVENS: Thank you for your letter of the 24th regarding W. F. Taylor, O. D., Pullman, Washington.

The records of Mr. Merville show no purchases of Univis from any other source. A further letter from Dr. Newby cites several instances of quoting less than the stipulated prices. In the absence of sales it appears his use of Univis is practically limited to quotations on duplications.

Altogether the circumstances indicate that Dr. Taylor is not making appropriate use of the franchise, and we are cancelling his Univis license. Notification is being sent to him today (copy enclosed) and we are also advising Mr. Davies and Dr. Newby of this action.

Kindly consider confidential the fact that Dr. Newby made complaint to you and us in this matter. Our cancellation notice

292 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

to Dr. Taylor is simply the formal letter without making charges or explanations.

Yours very truly,

By THE UNIVIS CORPORATION,

LVB: Mc.

Copy: Riggs, Spokane.  
Salesman.

571

RIGGS OPTICAL COMPANY,  
DISTRIBUTORS OF BAUSCH & LOMB PRODUCTS,  
*San Francisco, May 24, 1940.*

UNIVIS LENS COMPANY,  
*Dayton, Ohio.*

Atten: Mr. L. V. Browne.

GENTLEMEN: This is in connection with your letter of May 11th to our Mr. Davies at Spokane, and his reply of May 21st.

We did receive a report recently that Dr. Newby of Pullman, Washington, felt that Univis lenses had been sold in Pullman at a price lower than \$16.00 per pair, about \$12.00 per pair.

In checking our records of Univis sales in Pullman, we find that the other optometric licensee there, Dr. W. F. Taylor, had purchased practically no Univis from us during 1939, and the early part of 1940, his total usage being about a pair in 1939 and a half pair in 1940.

Because of this condition we planned to talk the matter over with Mr. Merville so that he could investigate through any other distributors who might be rendering service in Pullman, inasmuch as the number of pair purchased by Dr. Taylor could not go very far to upset a price condition in Pullman, even if he did stray from the beaten path, and as mentioned before, the report that lenses were sold under \$16.00 was made in a general way and not reported as a specific instance.

Inasmuch as Dr. Newby has addressed your company on the matter, we would suggest that you write to him for further and more specific detail as to violations, and this will no doubt point out the way for further action.

With kind regards, we are

Very truly yours,

NS:B.

RIGGS OPTICAL COMPANY,  
N. STEVENS.  
N. Stevens.

572

RIGGS OPTICAL COMPANY,  
DISTRIBUTORS OF BAUSCH & LOMB PRODUCTS,  
*Spokane, Washington, May 21, 1940.*

UNIVIS LENS COMPANY,  
*Dayton, Ohio.*

Attention: Mr. L. V. Browne.

GENTLEMEN: The matter which you referred to in your letter of May 11th, when you quoted a letter from J. F. Newby, O. D., of Pullman, Washington, has been up for discussion with our San Francisco office, and Mr. Stevens will communicate directly with you about it.

Mr. Stevens was going to talk to Ray Merville about this, and apparently Ray passed away before the opportunity of a verbal discussion of the subject was possible.

It was indeed a great shock to us to learn of the rather sudden passing of our mutual friend, Ray Merville.

Very truly yours,

RIGGS OPTICAL COMPANY,  
PAUL G. DAVIES.

PGD: VZ.

573

DR J. F. NEWBY,  
OPTOMETRIST, ORTHOPTIST,  
*May 20, 1940.*

THE UNIVIS LENS COMPANY,  
*Dayton, Ohio.*

DEAR SIR: Your letter of May 11, regarding the price-cutting on Univis lenses of which I wrote you previously, has been received.

I will try to give you the information asked for, but do not know the names of the parties who purchased the lenses. However, I have so many tell me, when I charge them \$16.00 for a pair of Univis lenses, that they can get them for less from Dr. Taylor, Dr. W. F. Taylor, Main St., Pullman, Washington, has been quoting Univis lenses at prices ranging from five to seven dollars each. Six dollars each lens was quoted to Miss Naoma Holbrook, 505 Pearl St., Pullman, Wash., Seven dollars each lens was quoted Mrs. Robert Greenwell, Pullman, Washington, and we were told by Mrs. A. J. Albohn, Pullman, Wash., that she could have had her Univis lens duplicated for one-half the price I charged her. My charge was \$8.75 for one-half pair of rimless Univis lenses.



If this is not enough to have quotations, I will have a univis lens purchased by some one from him if that is necessary.

I will appreciate immediate action in this matter. I prefer to have this matter kept confidential.

Sincerely yours,

J. F. NEWBY, O. D.  
Dr. J. F. Newby.

JFN:nh

574

MAY 11, 1940.

Mr. P. G. DAVIES;  
*Riggs Optical Co.,  
Paulsen Medical-Dental Bldg.,  
Spokane, Washington.*

DEAR MR. DAVIES: We have the following letter from J. F. Newby, O. D., Pullman, Washington:

"The two copies of the Univis Fair Trade Agreement which you mailed to me May 1st have just been received. You will find the original copy signed and attached to this letter.

"There is a matter however, concerning price cutting on Univis lenses here in Pullman, that I would like to have straightened out. Univis lenses are being sold for as low as \$6.00 each by a concern here. I spoke to Mr. Davies of the Riggs Optical Co. of Spokane several weeks ago about this, and he said he would write you concerning it. I presume you have information regarding this matter from him by this time. At any rate I am anxious to have this situation cleared up as it is very distressing since practically all my bifocals are Univis."

Possibly you wrote about this matter to Mr. Merville, whose recent passing shocked us.

Will you kindly let us have full information about the circumstances at Pullman, together with your comments on the situation?

Thanking you in anticipation,

Sincerely yours,

THE UNIVIS LENS COMPANY.

LVB:Mc.

575

MAY 11, 1940.

J. F. NEWBY, O. D.  
*218 First Natl. Bank Bldg.,  
Pullman, Washington.*

DEAR DOCTOR: Thank you for sending your signed Fair Trade agreement.



577

**RETURN RECEIPT.**

Received from the Postmaster the Registered Letter of \_\_\_\_\_  
number of which appears on the face of this receipt.

\_\_\_\_\_

\_\_\_\_\_

Date of delivery \_\_\_\_\_  
From \_\_\_\_\_

578

Post Office Department  
Special Delivery  
REGISTERED MAIL  
55675  
REGISTERED PARCEL

DAYTON, OHIO

DAYTON, OHIO

We do not have information here concerning the matter of price-cutting to which you refer. Possibly Mr. Davies wrote to Mr. R. E. Merville, our Pacific Coast manager, who passed away on April-25th after a brief illness—to the profound sorrow of his associates and numerous friends in the profession.

Will you kindly give us complete information about the matter doctor—names of all parties, addresses, and all details of fact, together with comments. This will be considered strictly confidential if you wish.

With the information we will be able to proceed according to circumstances, and assure you of vigorous action to correct the situation.

We are also writing to Mr. Davies.

We thank you for bringing the matter to our attention.

Sincerely yours,

THE UNIVIS LENS COMPANY,

By \_\_\_\_\_

LVD: Mc.

576

DR. J. F. NEWBY,  
OPTOMETRIST, ORTHOPTIST,  
May 7, 1940.

THE UNIVIS LENS COMPANY,  
Box 824, Dayton, Ohio.

DEAR SIR: The two copies of the Univis Fair Trade Agreement which you mailed to me May 1st have just been received.

You will find the original copy signed and attached to this letter.

There is a matter however, concerning price cutting on Univis lenses here in Pullman that I would like to have straightened out. Univis lenses are being sold for as low as \$6.00 each by a concern here. I spoke to Mr. Davies of the Riggs Optical Company of Spokane, Wash, several weeks ago about this, and he said he would write you concerning it. I presume you have information regarding this matter from him by this time. At any rate I am anxious to have this situation cleared up as it is very distressing since practically all my bifocal prescriptions are Univis.

May I hear from you please.

Very truly yours,

J. F. NEWBY, O. D.  
Dr. J. F. Newby.

JFN:nh

Roy Marks. (Mpls.)

L. V. Browne.

9/6/38.

Following from E. H. Schmidt, O. D., Arlington, S. D.:

"I am writing to inquire if E. F. Hoffelt, Optometrist of Estelline, S. D., is a Univis licensee. The reason I am asking is that some of my patients have been over there and in quoting prices he gave prices on bifocals similar to Univis and at a lower price, of course—so I would like to know so I can know what to tell my patients. Please consider this strictly confidential."

See reply. Schmidt was licensed in 1932 through Wahlgren-Carlson, reported jewelry connection. In 1933 correspondence showed him in connection with drug store, Maxwell Drug Co. Only O. D. there, reported high grade, and left on list.

Nothing shown on sales reports from him, nor Hoffelt. Latter was licensed through Walman in 1932. Both may be buying through Walman or Benson, who do not report. Only entry on card is Schmidt request for A. R. brochure.

Suggest checking to see if Hoffelt is using and from whom—and at the same time there might properly be a check on Schmidt about his sales and source. Will pass along any data we get from him.

-LVB:MC.

SEPTEMBER 8, 1938.

UNIVIS LENS CORPORATION,

*Dayton, Ohio.*

GENTLEMEN: I have your letter of the 6th inst., and thank you for this information.

In regard to this licensee quoting a price on Univis, I don't know that he did. The reason I wrote to you was that this patient mentioned was supplied with a pair of Univis by me and had an accident with them and hearing of the lower prices at Estelline—\$13.50 for Kryptoks in standard Hibe frame—he called there and this optometrist told him that he did not need such a high-priced bifocal and quoted him the \$13.50 price and said he could furnish him with similar style—Widesite or Fulvue—at \$2.00 more, or \$15.50 complete. From that remark I figured that he was not interested in supplying the best and was



also undermining this man's confidence in me. In other words he was saying that the later type rounded tops were just as good and he could cut the price.

Please do not quote me on this as I do not want to get in trouble with this man—am just doing this for my own protection; also want the Univis Company to get a square deal.

Sincerely yours,

E. H. SCHMIDT,  
E. H. Schmidt.

581

SEPT. 10, 1938.

E. H. SCHMIDT, O. D.,

*Arlington, S. D.*

DEAR DOCTOR: Thank you for the further information regarding E. F. Hoffelt, O. D. We are passing it on to our Field Manager. The fact that you do not desire to be quoted will make the check-up on complaint more difficult, but of course your request will be observed. If the incident was correctly reported to you by the patient it shows that while cut-price offer of Univis was avoided the other phases involved reflect an unsatisfactory situation.

The matter will be proceeded with and we will advise you of developments.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_

LVB: MC.

Copy: Marks.

582

Roy Marks. (Mpls.)

L. V. Browne.

9/10/38.

Re: E. F. Hoffelt

Schmidt's letter makes it look like Hoffelt is a cheap price man and the kind who says: "I can supply you with Univis if you insist, but——." If you get no definite dope on him, but think him doubtful. I can write him to give us report of number of Univis he has sold this year and prices charged—then cancelling him if he doesn't answer satisfactorily in say 15 days.

LVB: MC.

583 Company correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To L. V. Browne.

From R. Marks.

Place Mpls. Date 9/17/38.

Re: E. H. Schmidt, Arlington, S. D.

I have checked into this case from this end and this is what I find;

Schmidt is a chronic complainer—and is not to be taken too seriously—However, Hoffelt, a Walman Opt. Account, has not used any Univis for two years—never ordered any from Benson or Twin City either. Uses nothing but Nomarx from Walman. So it is highly possibly that Schmidt's suspicions are true—as others think that Hoffelt is capable of doing just what he said he did.

I do not feel that it would be worth the time and money to go out there and investigate the matter—so with this info, I feel we can base our judgment. I would recommend the removal of Hoffelt after a letter from you trying to get a committment from him as to future use, etc.

Regards;

Roy.

Send Regret #1. Cancel if no reply in 15 days.

584

SEPT. 19, 1938.

DR. E. F. HOFFELT, .

*Estelline, S. D.*

DEAR MR. HOFFELT: We regret the situation prompting this letter. We refer to the lack of Univis sales by you.

As Univis lenses serve the bifocal needs of patients to best advantage and will yield you attractive profit with protection, we are at a loss to understand why you do not use them.

The fact that we license a very small percentage of the retail optical outlets (and thus deny ourselves the business to be had from the larger number) makes it essential for each licensee to do his part. We are not justified in maintaining a franchise holder who does not use the privilege. So we frankly ask you the question: is it your desire to be continued as a Univis licensee; if so,

please give us your estimate of the number of pairs you will average monthly. We will appreciate an early reply.

Sincerely yours,

THE UNIVIS LENS COMPANY.

EFB: MC.

Copy: Marks.

585

OCTOBER 10, 1938.

Revoke.

DR. E. F. HOFFELT,

*Estelline, S. D.*

DEAR DOCTOR: We are sorry to have received no reply to our letter of September 19th, asking if you want to be continued as a Univis licensee. The inference to be drawn from your silence and the circumstances prompting our inquiry is that you are not sufficiently interested in maintaining the connection.

We are reluctant to act on this assumption as it may be an erroneous one. There is no desire to terminate your franchise if you give assurance of making appropriate use of it by selling Univis—the purpose for which it was issued—and we again respectfully ask for an expression from you in that regard.

Sincerely yours,

THE UNIVIS LENS COMPANY.

EFB: ES.

Copy—Marks.

586

NOVEMBER 3, 1938.

THE WALMAN OPTICAL CO.,

*Minneapolis, Minn.*

GENTLEMEN:

This is to advise that the contract of Dr. E. F. Hoffelt, Estelline, S. D., has been revoked this date. Please remove his name from your Univis list. We are enclosing copy of letter to him, for your information. This letter follows two others written regarding his non-use of Univis, to which he made no reply.

Yours very truly,

THE UNIVIS CORPORATION.

MCD: M.

Copy: Marks.

MARCH 17, 1938.

DR. H. C. OTWELL,  
*Fayetteville, Arkansas.*

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in July 1936 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return the metal certificate and other Univis material supplied to you.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, *Vice President.*

LVB:MC  
Reg. No. —

MARCH 17, 1938.

BARNETT & RAMEL OPT. CO.  
*Kansas City, Mo.*

Attention: Mr. H. K. Wright.

GENTLEMEN: We are sorry to learn that H. C. Otwell, O. D., Fayetteville, Ark., has slipped into price-cutting methods, and we certainly agree he should be removed from the Univis list. Notice of cancellation is being sent to him immediately, without going into explanation of why except to say that the license has not served the intended purpose satisfactorily.

Thank you for bringing this to our attention.

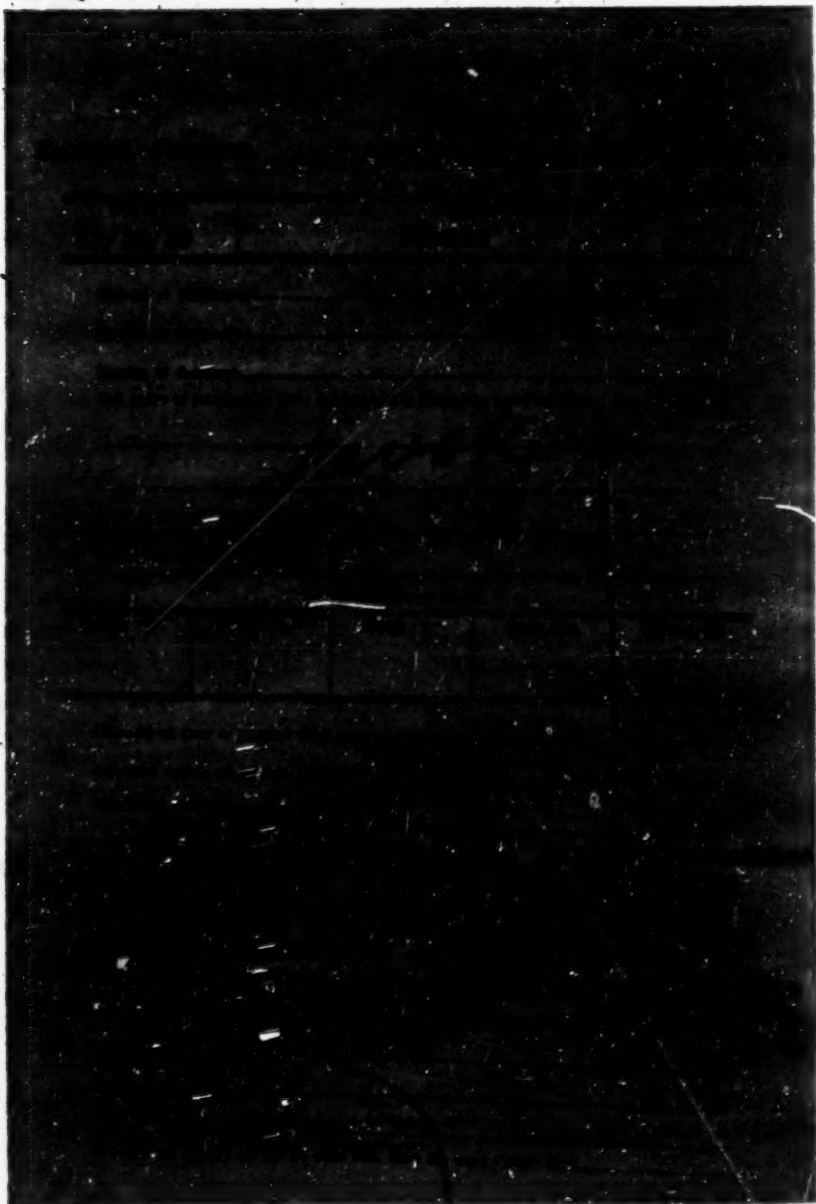
Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_

LVB:MC.  
Copy: Hancock.







589

BARNETT & RAMEL OPTICAL COMPANY, INC.,  
1110 Grand Ave., Kansas City, Missouri, March 15, 1938.

Revoke.

UNIVIS CORPORATION,

Dayton, Ohio.

GENTLEMEN: With reference to licensee, H. C. Otwell, O. D., Fayetteville, Arkansas:

This party was recommended by us a number of months ago for a Univis franchise which was issued. At that time we felt that he would be desirable for Univis privileges, but since has reverted to price cutting methods that will be detrimental to Univis. We therefore recommend that his franchise be revoked.

If there are any further questions in this connection or any information we can give you, please feel free to write us.

Yours very truly,

BARNETT & RAMEL OPTICAL COMPANY,

H. K. WRIGHT.

Homer K. Wright.

HKW: H.

Exhibit 29

591

Roy Marks.  
I, McDowell.

11/30/39.

Re: Laurence S. Betts, Huron, S. D.

I have a copy of a letter you wrote to the above when here Nov. 20th, in which you say:

"The individual to whom you refer is being removed from the Univis 'permanently.' We have sufficient evidence to indicate that this would be the move consistent with our policy and desire to maintain a minimum retail price."

Presumably you referred to Sherman Johnson of Huron. You must have taken the correspondence with you, for there is nothing here except the copy I mentioned. We have had no instructions to cancel Johnson. Is there anything to be done about this?

Regards,

MCD: Mc.

592

NOVEMBER 20, 1939.

LAURENCE S. BETTS, D. O.

*Betts Osteopathic Clinic, Huron, So. Dakota.*

DEAR DOCTOR BETTS: Thank you for your prompt answer and also for the well typed letter. I am glad to know that someone else in this world is as unhandy with a typewriter as I, and also glad to find an individual with a very delightful sense of humor.

I hope to have the opportunity of dropping out and meeting you in person one of these days.

The individual to whom you refer is being removed from the Univis list "permanently." We have sufficient evidence to indicate that this would be the move consistent with our policy and desire to maintain a minimum retail price.

I trust that this will help you clear up the picture in Huron.

With kindest personal regards, I am

Very truly yours,

THE UNIVIS LENS COMPANY.

R. Marks.

k.

593

DECEMBER 5, 1939.

SHERMAN L. JOHNSON, O. D.,

*Huron, South Dakota.*

DEAR DOCTOR: In your letter you mention that you sold Univis lenses at \$15.00 per pair. This was in violation of the contract by which you obligated yourself to sell at not less than the minimum prices established by contract. Ample and repeated notices of the schedule of prices were sent to you.

Under the circumstances, it will not be feasible to re-consider the cancellation of the license at this time, we are sorry to say.

Yours truly,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB: Mc.

Copy: Marks.

596

*Exhibit 30*

Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Univis—Attn: L. V. Browne.

From John Maloney.

Place, Fremont, Neb. Date 4/20/40.

Re: J. N. Plumb, M. D., York, Neb.

Since calling on this man last week, and reporting on him, I have been informed by the Barnet-Ramel Optical Co. that he advertises glasses for a certain price, a very low one.

594

Mr. L. Johnson  
General

Huron, South Dakota

4414th Co. P  
Camp 1000

DEC 27

copy  
to Marks

Dear Sir:

I received your letter this  
morning and am surprised that  
you have not yet received an  
answer. I think, is anything  
I have don't would like to  
know. I can have been waiting  
the answer to you right along  
and I am sure it is sold at 16 in  
price. So that I don't use very  
many but when they ask for  
it, could see it is can get it.

260

Dr. Sherman L. Johnson

Optometrist

Huron, South Dakota

would like to have some  
more done and will see to  
that it is done. I don't  
want to do any more.

would assume it was  
not at all as to what it  
might be. I will do the best  
I can. This is the best I can  
do. I have received a letter from you  
concerning my thing. I hope this  
will be satisfactory  
and will do the best thing  
I can. Yes.

Yours Truly  
Dr. Sherman L. Johnson



Even without this information, I considered removing him, seeing no possibility of future use.

Consequently, I suggest that he be removed from our list, and that my report on the man be so amended.

Regards,

JOHN.

Rec'd.

597

APRIL 22, 1940.

J. N. PLUMB, M. D.,  
—York, Nebraska.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in June 1932 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return any Univis material you have in your possession.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_  
Vice President.

LVB: Mc.

Reg. No. —

BARNETT & RAMEL OPTICAL CO.:

In accordance with the above, please remove this name from your Univis licensee list.

THE UNIVIS CORPORATION.

Copy/Maloney.

598

Exhibit 31

BARNETT & RAMEL OPTICAL COMPANY, INC.,  
303 Equitable Bldg., Des Moines, Iowa,  
February 21, 1940.

UNIVIS LENS COMPANY,  
Dayton, Ohio.

GENTLEMEN: This is to advise you that George Ronan, O. D., is no longer located in Cedar Rapids, Iowa. His new and present location is with G. W. Miser, M. D., 425 Fleming Building, Des Moines, Iowa.

Therefore, we recommend that Dr. Ronan be removed from the Univis licensee list immediately due to his present connections, since Dr. Miser is not licensed for Univis and is not eligible for these privileges. We feel that Dr. Ronan would sell Univis at Dr. Miser's prevailing prices, which would be in direct violation of the Univis contract. We do not have any definite information that he would violate his contract; however, we assume that he would since he is now connected with Dr. Miser.

Trusting that you will give this matter your immediate attention, and advise us what action is taken, we are,

Yours very truly,

BARNETT & RAMEL OPTICAL COMPANY,  
JOS. F. WHYLLIE.  
J. F. Whyllie.

JFW:JS.

Copy: Marks. Revoked.

599

FEBRUARY 23, 1940.

BARNETT & RAMEL OPTICAL CO.  
303 Equitable Bldg., Des Moines, Iowa.  
Attention: Mr. J. F. Whyllie.

GENTLEMEN: Referring to your letter of the 21st inst., considering the change made by George Ronan, O. D., formerly of Cedar Rapids, Iowa, we are cancelling his Univis license.

We enclose a copy of our notice mailed to him today.

Yours very truly,

THE UNIVIS CORPORATION.  
By \_\_\_\_\_

LVB:Mc.

Copy: Kansas City office.

600

FEBRUARY 23, 1940.

GEORGE J. RONAN, O. D.  
425 Fleming Bldg., Des Moines, Iowa.

DEAR DOCTOR: We are advised of your removal from Cedar Rapids, Iowa, where franchise was issued to you, and are terminating the Univis license granted to you in contract dated July 12, 1938.

This notice is sent in accordance with clause of contract providing that the Univis license is revocable at option of the Univis Corporation.

Please return any Univis materials remaining in your possession.

We regret that circumstances do not warrant continuance at this time.

Yours truly,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_,  
Vice President.

LVB: Mc.

Reg. No. —

Copy: B&R, K. C

B&R, Des. M.

R. MARKS:

According to V. H. H. reports, the tactics of Dr. Miser make him ineligible.

LVB.

Exhibit 32

601 (Copy to Marks.)

TITUS C. KREUZER, M. D.

THEIMER BLDG.

Owatonna, Minnesota, January 26th, 1940.

UNIVIS CORPORATION,

Dayton, Ohio

GENTLEMEN: I understand that Shoen & Shoen are attempting to get a Univis license. They buy A. O. practically exclusively and have their merchandise fabricated by Commercial Optical of Omaha, which should give you some idea of their ethics. For instance, they have Numont but are charging \$15.00 for tinted lenses in A. O. triflex Numont. Sell Ful Vue bifocals in Ogdenflex—triflex for 16 to \$18, all with examination. The reason they are trying to get Univis, is that one of my patients having Univis, went to get it put into Numont. They tried to get a refraction and supply something just as good—Ful Vue, no doubt, but perhaps they feel that they better get Univis. They refract and furnish Krytoks for \$7.50 and publicly boast that they furnish the same as others get \$12.00 for.

I am writing to you before a License is issued, as it is easier to reject than to recall, although I know that you are always on the lookout for those who use unfair methods. However, with their background, the same as the Jensen Optical Co., which has a branch

here, you have to expect that they will chisel on Univis the same as they do on everything else, Numont included.

Hoping that the above will influence you if they apply for a license, I am,

Respectfully Yours,

TITUS C. KREUZER, M. D.  
Titus C. Kreuzer, M. D.

602 Roy Marks.  
L. V. Browne.

1/29/40.

Owatonna, Minn.

Re: Titus C. Kreuzer, M. D. and Schoen & Schoen, Owatonna, Minn.

See letter from Kreuzer and reply. I could see nothing to be gained by not telling him Schoen & Schoen are licensed, as he would resent our withholding that information when he found it out, as he would. If he is good we wouldn't want to lose him on that score. But it's a question—card shows few scattered purchases—from B & R, Des Moines, Twin City—5 pairs only carded in 1939. Was originally licensed through Wahnman. No indication of purchases from Benson or Uhlemann.

As to Schoen & Schoen: they were licensed last August through Benson. You said the elder had been cheap, but son coming in changed things. No idea of their purchases, but note that credit has not been issued for them on sample case. Let's know what you check on this.

LVB:MC.

603

MARCH 19, 1940.

DRS. SCHOEN & SCHOEN,  
Owatonna, Minnesota.

GENTLEMEN: In view of the fact that the licensing arrangement entered into with you in August 1939 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

604

Sender's Name <b>Schoen +</b>		Street Address <b>Schoen</b>		City and State <b>Owensboro</b> ✓	
Date <b>3/17/46</b>		Order Optical <input checked="" type="checkbox"/> P. L. <input checked="" type="checkbox"/>		Remarks <b>Remove from list. Investigation shows contacts for license. See correspondence on J. Kreuzer MD.</b>	
Special <input type="checkbox"/>		Advertisement <input type="checkbox"/>		Sales <input type="checkbox"/>	
Dressmaking <input type="checkbox"/>		Window Displays <input type="checkbox"/>		Fragrance <input type="checkbox"/>	
Jewelry Store <input type="checkbox"/>		Restaurants <input type="checkbox"/>		Cosmetics <input type="checkbox"/>	
				High <input type="checkbox"/>	
				Average <input type="checkbox"/>	
				Cheap <input type="checkbox"/>	
Name of the <b>Tevoke</b> Your estimate of number of years of service that would be a good security average for him.					
Principal Author		Contributor		Attitude toward Tevoke	
Attitude of Tevoke toward		Attitude toward Tevoke		Does he make effort to use?	
Is his attitude toward the State more good, fair or poor? What is his principal difficulty? Any Complaints? Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Is following up, suggested?					
(Use Other Side of Sheet for Remarks)					



605

Dealer's Name	Address	City and State
L.J. Zimmerman		Ladysmith, Wis
Date of Call	Dealer's Name	
9/17/38	Marka	St. 10 100
Type of Insurance License or Prospectus No. of Policies If it is a prospectus, give outline of the insurance policy		
Attachments (List all attachments)		
Remarks (Write in this space)		
Please remove from list. He is advertising an insurance policy with his glasses and will replace all glasses free of charge if lost or broken within a year. This is a bait proposition and isn't setting so well with other accounts in the territory. Also, he has done nothing with Univis for some time.		
Please remove from list. He is advertising an insurance policy with his glasses and will replace all glasses free of charge if lost or broken within a year. This is a bait proposition and isn't setting so well with other accounts in the territory. Also, he has done nothing with Univis for some time.		

Kindly return any Univis material you have in your possession.  
We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB: MC  
Reg. No. —

N. P. BENSON OPTICAL CO.

In accordance with the above, please remove this name from your Univis license list.

THE UNIVIS CORPORATION.

606

SEPT. 19, 1938.

Dr. L. J. ZIMMERMAN,  
*Ladysmith, Wisconsin.*

DEAR DR. ZIMMERMAN: In view of the fact that the licensing arrangement entered into with you in November 1935 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB: MC  
Reg. No. —

607

JANUARY 19, 1940.

L. J. ZIMMERMAN, O. D.,  
*Ladysmith, Wisconsin.*

DEAR DOCTOR: We have received from Milwaukee Optical Manufacturing Company your application for franchise, transmitted with the explanation that you feel you will be able to use a reasonable amount of Univis lenses if re-licensed and recommending its approval.

However, at the time of cancellation of the previous license, in addition to inactivity with Univis, there was another point checked

by our field representative. This referred to your announcements regarding replacements of lenses, mountings, etc., without charge or at half-price—a policy inconsistent with Univis contract.

We are sorry that the circumstances make it unfeasible to improve the application at this time, and it will be held for consideration at some future date if then mutually agreeable.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB: Mc

Copy: Milw. Opt.—R. E. Oehler.  
Marks.

608

ROY MARKS.  
L. V. BROWNE.

2/10/40.

Re: L. J. Zimmerman, Ladysmith, Wis.

Attached is copy of letter from the above.

We did not enter into explanation in our first letter about cancellation in 1938. Nothing unfair about our attitude, as we had license with him based on presumption of activity with Univis, and his procedure with offer of replacement plan on bifocals could not apply to Univis without violation of contract. In other words, he either intended to sell Univis or to make it an invalid offer if he did so. As I understand it, he is not desirable.

I think I will answer him along the above line to eliminate the point of unfairness on our part in his mind, unless you think it will be better to consider him a prospect for future licensing. Let me know your ideas.

Regards,

LVB: Mc

609

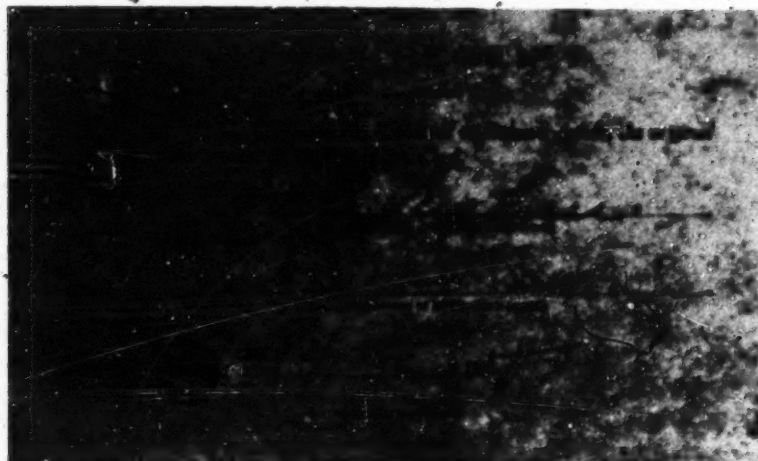
Re L. J. Zimmerman, Ladysmith

There is still too much objection from this man—who is in competition to a good MD—O'Connor who uses a lot of Univis. Apparently only wants them for duplication purposes. Do not issue license—and it would be just as well to drop the matter.

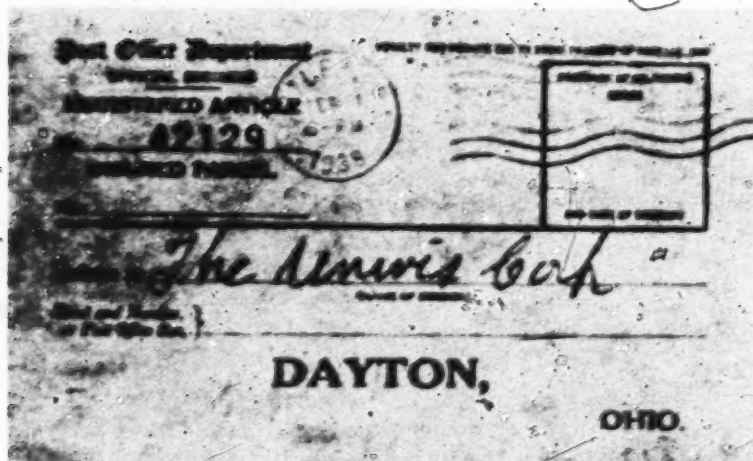
ROY.

3/10/40.

610



611



612 To the Univis Corporation, Dayton, Ohio, February 4, 1938:

MEMO RE UNIVIS LICENSEE CHANGE OF ADDRESS

Name of Licensee Carl H. Leighner, O. D.

New Address -----

Former Address 207 S. Main Street.

Revoke.

Is new location exclusively optical, or in connection with department store, regular jewelry store, or credit jewelry store?  
-----

REMOVAL FROM LIST

If a name should be removed from Univis list, write in the name above and check the reason below:

Out of Business ----- Deceased ----- Change of  
Methods -----

Remarks regarding change of methods or competitive practices since license was issued can be written on other side of this sheet.  
-----

(Signed) TRIANGLE OPTICAL Co.,  
Distributor.

Per H. E. KNEIRIM.

(Over)

613 Turned out to be very cheap. Buys stock Kryptoks at \$1.00 per pair and secon's in single vision lenses.

Could tell by his attitude that he will not prescribe Univis. He is very price conscious and afraid to ask price.

Please notify him of his removal from our list.

614

FEBRUARY 11, 1938.

MR. CARL H. LEIGHNER,  
207 S. Main St., Butler, Pa.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in June 1934 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.



Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent licenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return the metal certificate and other Univis material supplied to you.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
\_\_\_\_\_, Vice President.

LVS: MS.

Reg. No. —

Copy: Triangle.

615

FEBRUARY 11, 1938.

TRIANGLE OPTICAL CO.,  
Pittsburgh, Pa.

GENTLEMEN: This is to advise that the contract of Dr. Carl H. Leighner, Butler, Pa., has been revoked this date; please remove his name from your list of Univis licensees. Copy of letter to him is enclosed.

Yours very truly,

THE UNIVIS CORPORATION.

Copy: Kneirim.

618

APRIL 12, 1939.

W. A. MOORE, O. D.,  
Peshtigo, Wis.

DEAR DOCTOR: We are sorry to have received no reply to our letters of November 9, 1938, and February 8, 1939, asking if you wished to be continued as a Univis licensee. The inference to be drawn from your silence is that you are not sufficiently interested in maintaining the connection.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

We regret the circumstances.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB: Mc.

Reg. No. —

616

RETURN RECEIPT

I hereby acknowledge the receipt of the original  
of the following item of the file of this case.

W. A. Moore  
[Signature]

W. A. Moore  
[Signature]

4-15-34  
[Date]

617

*Mary A. Cook*

TAYLOR

OHIO



"I think the following should be written Regret letters . . . inactive as shown by sales reports and my checking with jobbers. . . . are using kryps and dealing with a very cheap cutrate type of house."

R. MARKS 11/5/38.

(See R. W. Bayley canc.)

619

Exhibit 36

NEBRASKA OPTICAL CO.,  
SUITE 202, I. O. O. F. BUILDING,  
Fremont, Nebraska, June 15, 1938.

UNIVIS LENS CO.,  
Dayton, Ohio.

DEAR SIR: May we send in the name Metzinger Optical Co.—Dr. C. J. Metzinger, O. D., of Fremont, Nebraska, as a Licensee to sell Univis Lenses.

Dr. Metzinger has an upstairs office, a finishing or edging shop for single vision only, and does not advertise price. He is now selling Panoptics and Ful-Vue lenses and uses very little Nomar work.

He will not sell a quality Bifocal unless he can pass along to his Patient a Certificate showing what they are getting for the price. In our short time here we have learned that he is one of the very few in the city that is selling anything better than a Nomar type of lens.

He has been buying of the American Optical Co., but the big share of the work will be our way if we can supply him with a real bifocal. Please advise as soon as possible as to the License and also the certificate.

We remain, yours truly,

W. J. DeKAY,  
NEBRASKA OPTICAL CO.

620

JUNE 17, 1938.

Mr. WM. J. DeKAY,  
Nebraska Optical Co., Fremont, Nebraska.

DEAR MR. DeKAY: Referring to your inquiry about C. J. Metzinger, O. D. of Fremont: according to survey report we had from the territory a couple of years ago, the Metzinger Optical Co. was owned by Kindy Optical Company. Do you know if it is still owned or controlled by that company, or if any connection whatever exists now? Please give us full information about the present situation and Dr. Metzinger's standing with the ethical element in the territory.

Before making an appointment we want to be sure about two things: that an applicant conducts his practice ethically and, second, that he will make proper use of license by using sufficient Univis to make the connection profitable to you, him, and us.

Sincerely yours,

LVB: Mc.

THE UNIVIS CORPORATION,

Mr. HANCOCK: You marked Metzinger Opt. Co., N. C. on list June 1936—owned by Kindy Optical Co.

621

JUNE 21, 1938.

Mr. WM. DEKAY,

*Nebraska Optical Co., Fremont, Nebraska.*

DEAR MR. DEKAY: We are writing to our Mr. Hancock, who worked the territory, for additional information as he may be able to give us about Dr. Metzinger's standing. We want to be careful not to make appointments that will be damaging to prestige of Univis selective licensing—and while we have the remedy of cancellation for violations of contract, it is better to avoid appointments that are likely to lead to such a contingency.

We will write you again about him in the near future. You can either wait to hear from us before discussing the matter further with Dr. Metzinger, or you can have him sign the contract application blanks and send to us with Sample Case requisition, etc. If you have him sign now, it would be well to say that you cannot promise acceptance by the Univis Corporation and have gone as far as you can in recommending it. And if the contract is presented for his signature, a point to call his special attention to is that it restricts the retailer to supplying Univis lenses to his patients only—and he is obligated not to supply other dealers.

We are sending to you some franchise blanks, as requested, with Information Blanks and requisition coupons.

Sincerely yours,

THE UNIVIS CORPORATION,

LVB: Mc.

Copy: Hancock.

622

BARNETT & RAMEL OPTICAL COMPANY, INC.,

*Omaha, Nebraska, AUGUST 28, 1939.*

Mr. V. H. HANCOCK,

*% Univis Lens Company, Dayton, Ohio.*

DEAR VIRGIL: During the past couple of months, we have had several complaints concerning the free-for-all granting of Univis licenses in Fremont, Nebraska.



Perhaps we are partially responsible for some of these licenses being granted and if we are, our enthusiasm in selling Univis lenses out-ran our better judgment.

After analyzing the set-up in Fremont, it appears that but three of the licensees there are active enough or possess sufficient potentialities to make them profitable licensees.

The specific complaint is that two of the licensees, namely, Spangler and Metzinger, are artists in the practice of sharp tactics. We have been advised that the number of Univis lenses sold in Fremont would not decrease and would perhaps increase if this situation was remedied.

Any action you see fit to take will be appreciated and you may be assured you will have our cooperation 100%, regardless of your decision.

Yours very truly,

BARNETT & RAMEL OPTICAL COMPANY,  
IVAN.  
Ivan N. Petty.

INP:EC.

623

SEPT. 7, 1939.

MR. IVAN N. PETTY,

*Barnett & Ramel Optical Co., Omaha, Nebraska.*

DEAR MR. PETTY: Mr. Hancock has turned over your letter of August 28th regarding the situation at Fremont, Nebraska.

From your report, it is apparent that the two men should not be on the Univis list and we are cancelling their licenses.

Notifications are being sent to Drs. Clyde J. Metzinger and Stephen Spangler. Please remove their names from your Univis list. If you wish, you can convey the information of this action to the parties at Fremont who made the complaint.

This step has been taken with confidence in your analysis of the situation, Mr. Petty.

With kind regards and appreciation of your co-operation, we are

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_.

LVB:Mc.

Copy: Hancock.

SEPT. 7, 1939.

CLYDE J. METZINGER, O. D.,

*Stephens Natl. Bank Bldg., Fremont, Nebraska.*

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in July 1938 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return any Univis material you have in your possession.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB:Mc.  
Reg. No. —

625

*Exhibit 37*

FRANK AND LESSWING,  
659 MAIN STREET,  
*Buffalo, New York, February 15, 1939.*

UNVIS LENS CO.,

*Dayton, Ohio.*

GENTLEMEN: We have been informed today that Berkhausen & Beecher of 11 West Chippewa St. have been placed on the Unvis list.

These two men worked for the Advance Optical Co. in the wholesale business so we believe that they are not fit for the Unvis list as they have only been in business a little over two weeks they have not proved their stability. In fact we are disappointed in their being taken in the fold.

Very truly yours,

FRANK &amp; LESSWING OPT. CO.

626

G. P. Tully.  
L. V. Browne.

2/16/39.

Re: Berkheimer & Beecher, Buffalo, N. Y.

Enclosing copy of letter from above and the reply requesting additional information; also copy of letter from Frank & Lesswing Opt. Co.

The licensing was through Newman-Brown (H. S. Brown) favorable report, and his recommendations have been considered

dependable. Maybe some talking they did about the price incident brought about Frank & Lesswing's letter.

We have not written Prechtel Opt. Co. and you may be sure that anything we do write them if we get name of patient, etc., will be very careful.

I understand you have planned a trip into New York, and possibly it would be well to step it ahead a bit and get into Buffalo at an early date to handle this situation. If Berkheimer & Beecher don't really belong, we can dispose of them by cancellation.

Regards,

LVB: Mc.

627 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Mr. L. V. Browne,

From G. P. Tully.

Place, Hotel Statler, Buffalo. Date, 9/21/39.

Rg: Berkheimer & Beecher, Buffalo

From all I have been able to learn, this account should not be a Univis licensee. Berkheimer seems to have a rather bad reputation in Buffalo & in Pennsylvania, where he formerly operated. Almost every retailer I've called on so far this week has made a complaint about them.

Prechtel especially was very critical about their trying to "steal" their customers. Berkheimer & Beecher, of course, 628 are located at Prechtel's former address.

When I told George Prechtel about B & B's letter concerning Mrs. Moore, who claimed the 20% discount, he hit the roof. His brother Felix is a calmer individual, however, & finally the three of us talked the situation over more sanely. They did not deny, however, that they have not been granting discounts on Univis to certain groups, including nurses; Mrs. Moore is supposedly a nurse.

629 Much of the criticism for Berkheimer & Beecher's being licensed is directed at Newman-Brown, I've tried to stress that no distributor has the authority to O. K. anyone as a Univis licensee.

I have not called on B & B because I want to avoid discussion about this 20% discount business. There's no doubt in my mind that the Guild opticians in Buffalo are still doing it. I 630 want to take this up with J. R. upon his return, as I believe this is an evil which should be eliminated. We have discussed it before.

I'll report further on B. & B. later this week, but I'm convinced they must be taken off.

Frank & Lesswing reminded me of their "probation period" before they could obtain a Univis license, despite Harvey Frank's reputation & the fact that Frank had been selling & boosting Univis for years.

Best regards,

G. P. T.

631 G. P. Tully,  
L. V. Browne.

2/22/39.

Re: Berkheimer & Beecher

If it is your judgment that they should come off the list, dispose of it while there, picking up Univis material and letting the other men know it is being done. We will formally cancel when you request it. You can say, if you wish, that the appointment was probationary on misunderstanding and quite evidently does not work out satisfactorily.

LYB: Mc.

632 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Mr. L. V. Browne.

From G. P. Tully.

Place, Hotel Statler, Buffalo. Date 2/24/39.

Re: Berkheimer & Beecher, Buffalo

I called on them yesterday and politely as possible told them their license should not have been issued until they had served a sort of probationary period, as they had just started in business.

They were very belligerent about the whole thing. Told me they could get Univis without a license and would sell them  
633 for \$12 or less. They refused to give me the Sample Case and license. I was very considerate with them and merely told them I would have to report the circumstances to our legal department in Dayton. (How are you, Squire?)

I reported the result of my call to Newman-Brown and they agreed we were doing the right thing in revoking B. & B.'s license, in view of their actions and attitude. Mr. Brown said he was  
634 sure he could obtain the Sample Case and license for me today. I was in Lockport today and Newman-Brown was closed when I got back to Buffalo. I will see Mr. Brown tomorrow a.m., however, and see how he made out and will write you. Suggest you wait until you receive my letter Monday before taking any action.

In one instance in this mess, a woman left a pair of glasses (I think they were Univis) with B. & B. for repair, thinking she was leaving them at Prechtel's and upon discovering her  
 635 mistake she immediately returned for her glasses, which they refused to give her. The woman went to the Buffalo Better Business Bureau and one of their men accompanied the woman to B. & B.'s and prevailed upon them to return the glasses to the woman. B. & B. told me this themselves and I also heard it elsewhere. They have also been telling Prechtel's customers that Prechtel has retired from business and that they have taken over the store.

Best regards.

G. P. T.

636

FEBRUARY 28, 1939.

FRANK & LESSWING,  
*Buffalo, New York.*

GENTLEMEN: You wrote us about the recent appointment of Berkheimer & Beecher to the Univis list, and will be interested to know that this error of licensing has been remedied by cancellation. Sorry about the occurrence and we appreciate your interest in writing us in the matter.

And, on a happier theme, may we add our congratulations on your membership in the Guild.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB: Mc.  
 Copy: Tully.

637

FEBRUARY 28, 1939.

BERKHEIMER & BEECHER,  
*11 West Chippewa St., Buffalo, New York.*

GENTLEMEN: In accordance with the provision marked "Third" in the contract with you dated January 27, 1939, we notify you that the license issued to you under Univis patents is hereby terminated.

We regret that the contract was entered into through a misunderstanding of the circumstances.

Yours very truly,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB: Mc.  
 Reg. No. —  
 Copy: Newman-Brown.  
 Tully.



## Exhibit 38

638

BARNETT OPTICAL CO.,  
Missoula, Mont., 9/4/33.

R. E. M.

Date of Call Aug. 1933.

Salesman's Name R. E. M.

Optician or Optometrist? -----

Licensee or Prospective, Ex-Licensees.

Number of floormen, Two when both are at home.

Full names of principals in firm: indicate who is dominating active manager: Farther &amp; Son.

Buys from here and there. Buying Commercial Kryptoks from R. Mohr &amp; Sons for less than \$.75.

## Attitude Toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract

Character of store or practice? High-grade or popular prites?

Estimated volume of bifocals annually? 120 or more.

Wholesaler from whom he purchases Univis. No one.

Remarks: They believe that Kryptoks, the way they buy them and grind them, will make them a fortune. They have made money somewhere because the son has been East for two months and the Father and family just left for the East and are going to Florida and then to California for the winter.

I took the son to lunch and tried very hard to talk them into using Univis on Rx but they positively will not, they would grind them but I put the quantity of 10 to 15 pairs per month but they would prefer to grind and buy as they feel they need them.

639. I put the responsibility of their retaining their license strictly up to them. They are just so much money minded that they believe that the only way to make money is to buy cheap and sell as they feel in order to retain a goodly volume of business.

Competition in town and members of the State Board in other towns of Montana are of the opinion that this firm is a disturbing element.

I left them feeling friendly toward us and with the thought that when they came to a time when they needed a protected bifocal that we would stand ready to throw out the life line and in the meantime we would put their license in Cold Storage.

I believe that we will make much more by removing them from the list and letting others in Missoula know of our action, in fact it has already had its effect.

I have their certificate of award. We must make it plain to Riggs in Spokane that they are not to extend Univis service to this firm after their license has been cancelled.

R. E. M.

640

SEPTEMBER 13, 1933.

BARNETT OPTICAL CO.,

*129 East Broadway, Missoula, Montana.*

GENTLEMEN: This is to notify you of the termination of the franchise issued to you, licencing you for service with Univis patent lenses—in accordance with the clause marked "Third" in the contract.

Regretting that the arrangement did not serve the intended purpose more satisfactorily, we are

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB:MC.

641

*Exhibit 39*

JULY 2, 1931.

CENTRAL OPTICAL CO. INC.,

*Cincinnati, Ohio.*

GENTLEMEN: Shuron Optical Co. Inc., Univis Manufacturing licensee, has referred to our attention your inquiry regarding the Univis proposition. On account of contract obligations, we are not in position to consider applications for license in Cincinnati.

If any change occurs modifying the situation we shall be pleased to have the proposition submitted to you.

We appreciate your interest and regret that circumstances prevent an arrangement.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB:TL.

642

JULY 2, 1931.

SHURON OPTICAL CO. INC.,

*Geneva, N. Y.*

Attention: Mr. G. J. Nagel.

GENTLEMEN: With reference to your inquiry from Central Optical Co. Inc., of Cincinnati, the contract existing with L. M.

Prince Co. does not permit sale to any establishment in Cincinnati or Dayton.

Mr. Collinson understands the situation in that regard, but we do not know whether or not he told you about it. We are advising Central Optical Company that we cannot offer a proposition at this time.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB:TL

643

SHURON OPTICAL COMPANY, INC.,  
Geneva, N. Y., July 6, 1931.

MR. L. V. BROWNE,

*The Univis Corporation,  
24 N. Jefferson St., Dayton, Ohio.*

DEAR MR. BROWNE: This acknowledges your letter of July 2 confirming our inability to establish any Univis distributor or finishing licensee in the cities of Cincinnati and Dayton, Ohio.

We understand the situation thoroughly, but the Central Optical Company, Inc., of Cincinnati, are a very good account of ours and we considered it advisable for you to inform them of the situation in their territory rather than to tell them of our inability to supply them with Univis lenses through our company. I believe it advisable to handle all subsequent inquiries on the same basis, as it places us in rather an embarrassing position with an account distributing our merchandise in substantial quantities to tell them that we cannot because of certain conditions permit them to handle a certain type of merchandise in any given territory, notwithstanding that the Central Optical Company, Inc., are doing business in several of the southern states.

It is rather a perplexing problem and one which I think the Univis Corporation can handle more advantageously than can we.

Very truly yours,

SHURON OPTICAL COMPANY, INC.  
By G. J. NAGEL

G. J. Nagel.  
LMB.

644

SHURON OPTICAL COMPANY, INC.,  
Geneva, N. Y., June 26, 1931.

UNIVIS CORPORATION,

*24 N. Jefferson Street, Dayton, Ohio.*

GENTLEMEN: Attached is copy of letter from the Central Optical Company, Inc., Cincinnati, Ohio, which requests information on Univis lenses.

The Central Optical Company's name does not appear on our approved list. They operate as wholesalers and their inquiry is being directed for your consideration and attention.

Very truly yours,

SHURON OPTICAL COMPANY, INC.  
By G. J. NAGEL.

G. J. Nagel.  
LMB.

645

CINCINNATI, OHIO, *June 22, 1931.*

SHURON OPTICAL COMPANY,  
*Geneva, N. Y.*

GENTLEMEN: Due to your notice in the Optical Journals, we have had several requests for information in regard to Univis lenses and if we can furnish them, how soon and at what price?

Any information that you can let us have, that we may be able to make a prompt reply to these inquiries, will be greatly appreciated.

Very sincerely yours,

CENTRAL OPTICAL COMPANY, INC.  
LEN LANTUS, *President.*

646

JULY 7, 1931.

SHURON OPTICAL CO., INC.,  
*Geneva, New York.*

Attention: Mr. G. J. Nagel.

GENTLEMEN: Here is a copy of the letter we sent to the Central Optical Co., Cincinnati on July 2d. It states the fact of the matter and courteously enough, I hope.

We appreciate that your business relations with various concerns make it advisable to have it made clear to them that you are not responsible for licensing.

We are very glad to cooperate with you in handling directly with the inquiring concerns any applications that might be embarrassing to you. In some cases you might wish us to say that you have recommended or urged their appointment—let us know when you want us to go to that extent in explaining that an application cannot be acted upon favorably.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB:TL

647

SHURON OPTICAL COMPANY, INC.  
GENEVA, N. Y., July 8, 1931.

MR. L. V. BROWNE,  
*The Univis Corporation,  
24 N. Jefferson Street,  
Dayton, Ohio.*

DEAR MR. BROWNE: The Central Optical Company of Cincinnati, Ohio, situation was very courteously handled.

Thank you very much.

Occasionally there may be instances rather delicate for us to handle because of long-standing associations and the sale of our general merchandise, in which event we believe these can be more advantageously handled by the Univis Corporation, and in each instance we will give you full particulars about inquiring concerns.

Very truly yours,

SHURON OPTICAL COMPANY, INC.  
By G. J. NAGEL.

GJNagel.  
LMB.

650

SEPTEMBER 13, 1933.

DR. S. E. ELKIN,  
*3508 Irving Park Blvd., Chicago, Ill.*

DEAR DOCTOR: This is to notify you of the termination of the franchise issued to you, licensing you for service with Univis patent lenses—in accordance with the clause marked "THIRD" in the contract.

Kindly return to us the metal license certificate, window display cards and Univis samples supplied to you.

Regretting that the arrangement did not serve the intended purpose more satisfactorily, we are

Sincerely yours,

THE UNIVIS CORPORATION.  
By \_\_\_\_\_

LVB:MC.

652

THE F. W. KING OPTICAL COMPANY,  
*Mansfield, Ohio, April 12, 1934.*

Send Copy to M. T. S.  
THE UNIVIS LENS COMPANY,  
*Dayton, Ohio.*

GENTLEMEN: We enclose, herewith, Univis Franchise in duplicate for O. O. Brenner, O. D. of our city which we believe you will find in order. Mr. Brenner is the owner of a jewelry and optical store located at 8 West Third Street, Mansfield, Ohio. A



648

Dealer's Name	Address	City and State		
N W SHANE BROOK	323 7th ST	Rockford ILL.		
Date of Call 2-21-34	Salesman's Name Remarks H. H. Brooke			
Optician or Optometrist?	o. o.			
Licenses or Prospective?	Reg.			
Number of Showmen?	1			
Full names of principals in firm; indicate who is dominating active manager:				
Mr. N. N. Shankbrook				
Anchors Toward Univis				
STYLE B	STYLE D	STYLE E	TRIPOCAL	CATARACT
Character of store or practice? High grade or popular price?				
Estimated volume of business annually?				
Wholesaler from whom he purchases Univis:				
Remarks: Undesirable! Disreputable looking store - seeing cheap make and certainly no asset to our list. Just ammunition for the opposition. I have picked up his certificate and recommend cancellation.				

If "Other" remarks are put on other side, write the word "over" here.

476

649

Dealer's Name

Address

City and State

J. E. Elkin

3508  
Irving Park Blvd

Chicago

Date of Call

9-5-33

Salesman's Name

WAS

Optician or Ophthalmologist?

O. D.

Licenses or Privileges?

Rep.

Number of Sources?

1

Full names of principals in firm, indicate who is dominating active manager

Chap - "Chizler"  
Revoke license.

Attitude Toward Davis

STYLE "A"

STYLE "D"

STYLE "B"

TRIFOCAL

CATARACT

Character of store or practice? High-grade or popular prices?

Estimated volume of business annually?

Wholesale firm whom  
he purchases from.

Remarks

If additional remarks are put on other side, write the word "over" here

26

88

651

Dealer's Name *O. O. Brenner* Address *contract "Feeling"* City and State *Manassett, Ohio*

Date of Call  
*4-16-34*

Examiner's Name  
*W. B. S.*

Opinion or Opinions?

License or Prospective?

Number of Salesmen?

Full names of principals in firm, indicate who is dominating sales manager

*No call made*  
*(Application from Flushing branch at Massett, Ohio, 4/16/34)*  
*Would not recommend him. Questionable tactics & low priced!*

Attitude Toward Union

SYLVE R

SYLVE D

SYLVE R

TROPICAL

CATARACT

*Other O. O. B. & the M. S. B.*

Character of store or practice High grade or popular price?

Estimated volume of business annually

Wholesale from whom he purchases lenses

Remarks

*would hold this against us.*  
*The few pros. he would use would cost us plenty in other business & prestige.*

118

It is better to have an ad put on this side than the word "not here."

119



few years ago Mr. Brenner did considerable price advertising in our local paper. However, he has discontinued this and it seems that at the present time he conducts a fairly ethical practice.

The writer explained to him that under no consideration could he sell Univis Bifocals for less than \$16.00 per pair in white and \$20.00 in tinted glass. He stated that by all means he would abide by this price until such time as the factory would make a revision. The writer feels that he could recommend the applicant on a basis that since he has discontinued to advertise cut-rate he is eligible for a Franchise. However, if he should again start to advertise on a cut-rate basis we feel the Univis Franchise should be taken from him.

If this application is approved will you kindly forward him the Univis Sample Case, also credit card for same.

Sincerely yours,

THE F. W. KING OPTICAL CO.  
C. E. REESE.

CER:MF.

Enc.

653 Mr. M. T. Silverman. (Philadelphia).  
L. V. Browne.

4/13/34.

Re: O. O. Brenner, Mansfield, Ohio

The information blank that came with the following letter from F. W. King (Mansfield branch) says standards of practice "only fair." What is your opinion about licensing him?

"We enclose herewith Univis franchise in duplicate for O. O. Brenner, O. D. of our city which we believe you will find in order. Mr. Brenner is the owner of a jewelry and optical store located at 8 West Third St., Mansfield, Ohio. A few years ago Mr. Brenner did considerable price advertising in our local paper. However, he has discontinued this and it seems that at the present time he conducts a fairly ethical practice.

"The writer explained to him that under no consideration could he sell Univis Bifocals for less than \$16.00 per pair in white and \$20.00 in tinted glass. He stated that by all means he would abide by this price until such time as the factory would make a revision. The writer feels that he could recommend the applicant on a basis that since he has discontinued to advertise cut-rate he is eligible for a franchise. However, if he should again start to advertise on a cut-rate basis we feel the Univis franchise should be taken from him.



"If this application is approved will you kindly forward him the Univis Sample Case, also credit card for same." Signed—C. E. Reese.

We await your reply before writing Mr. Reese.

LVB:MC

655

SEPTEMBER 13, 1933.

DR. ALFRED G. LANG,  
2239 Montrose Ave., Chicago, Ill.

DEAR DOCTOR: This is to notify you of the termination of the franchise issued to you, licensing you for service with Univis patent lenses—in accordance with the clause marked "Third" in the contract.

Kindly return to us the metal license certificate, window display cards and Univis samples supplied to you.

Regretting that the arrangement did not serve the intended purpose more satisfactorily, we are

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC

656

*Exhibit 44*

U. S. SUPREME COURT DECISION  
STRENGTHENS PROTECTION  
FOR UNIVIS LICENSEES

The Fair Trade Acts of California and Illinois, relating to Re-sale Price Maintenance, appealed to the U. S. Supreme Court, have been declared constitutional. Ohio and 13 other states have passed similar laws.

Thus another and important phase is added to the protection already given by the Univis distribution policy. The Univis set-up of selected licensing, based on patents and trade-marks, with minimum prices for re-sale established by contract, is exactly in accord with the spirit and the letter of these re-sale price maintenance laws.

We could ask for no finer indorsement of the protective system consistently used by Univis from the beginning.

Univis products are protected by trade-mark registration, as well as patents.

Infringers—whether by selling imitation lenses at wholesale or retail; or by misrepresenting other lenses to be genuine Univis; or by selling Univis lenses at cut prices; or by other acts of unfair trade—render themselves liable to the penalties of the state laws, in addition to the federal laws.

654

Trading Name

Address

City and State

Fred G. Long

2239

Montrose

Ave.

Chicago

Date of Call

9-5-33

Salesman's Name

J. D. S.

Description of Applicant

Location of Prospect

Number of Employees

Full names of principals in firm indicate who is dominating active manager

Price Cutter

N. G. Revok

Attended Training Course

STATE

STYLE

TYPE

PRINTER

ARTIST

Nature of work or product? High grade or popular price?

Estimated volume of business annually?

Wholesaler from whom  
he purchases lenses

Remarks

Additional remarks are put on other side, write the word "over" here

151

# UNIVIS BIFOCALS



*Enable  
you to*  
**SEE NATURALLY!**

old style  
design  
I am wearing bifocals

PROTECTED

THE UNIVIS LENS CO.  
DAYTON, OHIO

# PRECISION

*is the word for* **UNIVIS**

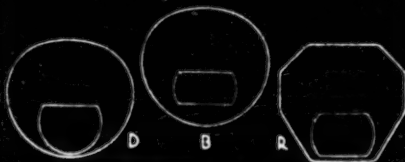


Precision at every stage of manufacture in the original blanks in the Univis factory at Dayton.

Precision that is **unequaled**; passing Newton Ring Test for accuracy.

Precision that is absolutely **necessary** in the original blanks to insure maximum benefit in vision efficiency and comfort for the wearers of the finished lenses.

Univis **protection**—thorough, too—with strictly enforced selective and protective licensing policy.

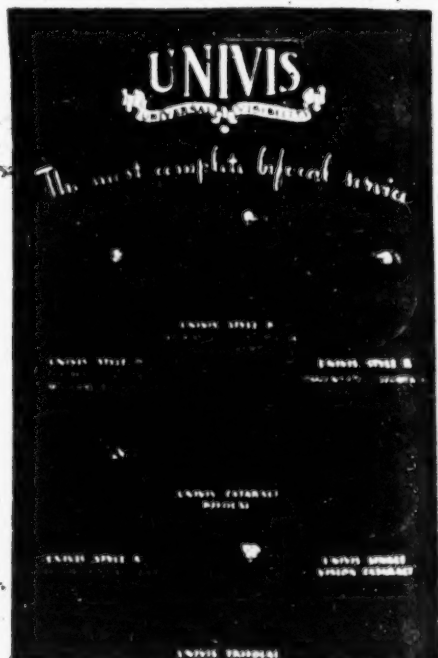


**UNIVIS**  
UNIVERSAL VISIBILITY

THE UNIVIS LENS CO. DAYTON, OHIO

# BETTER BUSINESS STORY

*In three short chapters*



Concentrate your bifocal service on Univis, the  
advanced protected lenses

## THE UNIVIS CORPORATION

DAYTON, OHIO





## How Many Persons Have a Part in Making Each UNIVIS Bifocal Blank?

This question is frequently asked by visitors at the Univis factory, in Dayton, after observing the number of operations amazing to them. The answer will be interesting to your Univis wearers—and prospectives.

Forty-six (46) persons have a part in making each Univis blank. In addition to hand work, there are fourteen (14) different machine operations to complete each blank. Twenty-one (21) inspections are made.

That is not all. The 46 enumeration does not include the people who make the glass and the mouldings comprising the component parts of a blank. Nor executives, supervisors, clerks or common labor.

And when the 46 have finished their respective tasks, the product leaving the factory is a blank, still to be ground to individual prescription, edged, drilled and mounted.

Ordinary bifocals are produced by far fewer people, in a fraction of the time. The

keynote of Univis production is precision. The 46 persons are specially trained for their particular phases of the work, with strict inspection at every stage.

The ultimate wearer of Univis lenses is the big beneficiary through the enjoyment of sharper and more comfortable vision—and the prescriber benefits by added prestige and protected profit.

Univis distribution is restricted to the better establishments by strict protective licensing.

**THE UNIVIS CORPORATION, DAYTON, OHIO**



Violations of Univis rights have been neither numerous nor extensive—but nevertheless annoying and involving intricate procedure.

These re-sale price maintenance laws will largely eliminate the offenses and facilitate the legal procedure where violations may occur.

This development makes Univis protection stronger and makes the Univis franchise a more valuable asset to the licensee.

THE UNIVIS LENS CO.,  
Dayton, Ohio.

MAY 5, 1932.

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TRIANGLE OPTICAL CO.,  
Pittsburgh, Pa.

Attention: Mr. L. Tucker.

GENTLEMEN: Your letter of May 3rd was taken up with the Licensing Committee to determine if an exception should be made in the case of Dr. S. C. Daugherty, so well qualified in other respects. The decision was that it would be detrimental to the general interests of Univis to make this appointment or any other under similar circumstances.

The point is that Univis is the target for all sorts of propaganda and we must not give the opposition any basis for that sort of stuff. In some sections of the country an optometrist or optician in a drug-store is held in poor regard and the opposition would be delighted to have the opportunity to say that Univis has licensees in drug-stores—which they would do, of course, without mentioning anything about the excellent qualities of the licensee, his establishment or methods. Realize that efforts are being made right along to destroy confidence in Univis selectivity. A drug store appointment would be made use of right in your own territory, no doubt, by adroit remarks to good licensees without using Dr. Daugherty's name. It is their misfortune that some otherwise worthy applicants are so situated that they cannot be appointed.

In regard to jewelry store connections, their desirability is questionable in general. For that reason, we emphasized to distributors that they were to be recommended only when absolutely first-class and unquestionably desirable. There has been criticism of some of the jewelry store appointments and unfavorable reaction as a result from the ethical element.

The price-cutting developments are playing havoc with the optical business and it is becoming clearer right along that protection is the only solution to prevent domination of the whole industry by price-cutters and the loss of all the prestige that the optical trade and profession has gained. We are on the right side

of this big problem—and the benefits are bound to come in a big way to the Univis set-up.

Sincerely yours,

THE UNIVIS CORPORATION

By \_\_\_\_\_

LVB:MC.

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SEPTEMBER 8, 1932.

THE PEERLESS OPTICAL Co.,

*Columbus, Ohio.*

GENTLEMEN: Regarding the application of E. C. Bolin, M. D., Columbus, we are inclined to doubt very much that it would be advantageous to the Univis set-up to issue a license in this case.

We do not know how Dr. Bolin stands in the profession, but when an oculist is in connection with a jewelry store and advertises bargain items it would be our assumption that other oculists and optometrists would not regard him with favor. In establishing licensees we have to take this into consideration as the ethical element would doubt the integrity of the selective licensing if we put on the list one whom they do not consider satisfactory.

Bear in mind that the competition is always alert to seize on any circumstances that they can use in their attempts to belittle the Univis selective licensing. It is quite possible that a retailer who cuts prices on other things might live up strictly to the Univis contract but the others would not believe that he was doing so—which would have the same effect as if he were actually cutting the prices. The volume to be had through an unsatisfactory retailer is sure to be more than offset by reduced volume from other licensees.

We mention these points because it will be very decidedly to your advantage to have the licensed set-up in your territory of such a desirable character that it cannot be honestly challenged in any instance.

As we have previously mentioned, you may be asked to make nominations which you cannot refuse to do without embarrassment. In such cases, when submitting the application, indicate to us that you do not consider the applicant wholly desirable and then we will send to him an acknowledgment of receipt of the application and state that it will receive consideration. If we are correct in our assumption regarding Dr. Bolin we will write him such a letter. However, if you consider special circumstances are such that a license should be issued to him we will be pleased

to receive the complete information. Please let us hear from you in this regard.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC.

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FEBRUARY 23, 1934.

WAHLGREN OPTICAL CO.,  
Chicago, Ill.

Att: Mr. W. F. Scott.

GENTLEMEN: With reference to the franchise application for Clair H. Pritchard, received with your letter of the 21st inst., we find that last week you sent in a Sample Case coupon card showing five sales to this optometrist, beginning January 6th. Will you kindly explain the circumstances under which he was furnished with a Sample Case and permitted to purchase Univis without license, so that in writing him we can govern ourselves accordingly?

When Univis lenses are supplied to a nonlicensee he and all others who hear about it would have grounds to believe that the Univis protective licensing is no better than that on some other lenses claiming to have a protective sales policy behind them.

We ask that you make it definitely known to all members of your organization that in your contract you have guaranteed that you will not supply our product to any dealer not licensed by the Univis Corporation—and add your positive instructions that this guarantee be complied with.

Please consider that restricting Univis sales to licensees is not simply an arbitrary rule but a measure of great constructive importance. Its value to you, to us, and all concerned depends on the fidelity with which it is followed. We know that observance of some so-called protective policies has grown increasingly lax recently, almost to the point of being nonexistent. For that very reason we want the Univis policy to stand out as the one on which there are no deviations from true selective licensing, and on which the licensees have full protection.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC.



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HARRY K. HILBERT,  
319 W. MULBERRY STREET,  
Baltimore, Md., April 10, 1934.

Revoke.

UNIVIS LENS CO.,  
Dayton, Ohio.

DEAR MR. SILVERMAN: The enclosed ad is sufficient to remove this party from list.

Please send this ad back to me by return mail.

Yours very truly,

HARRY K. HILBERT.

(Samuel H. Krone, licensee.) Ad enclosed, the lowest prices in Baltimore.

HKH:AH  
encl.

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APRIL 12, 1934.

HARRY K. HILBERT,  
Baltimore, Md.

DEAR MR. HILBERT: The Univis license of Samuel H. Krone is being cancelled by notification to him today.

As requested, we return herewith the advertisement clipping. Will you kindly send us another clipping for our records—mentioning the newspaper and date of publication?

Thank you for calling this to our attention.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC  
Encl.

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Mr. Roy Marks (Pittsburgh).  
L. V. Browne.

5/24/34.

The following reports received (all Pittsburgh):

Baer Optical Co., Schempp Bros., F. G. Berry, Buchbinders, W. C. Atkinson, W. E. Carson, M. D., A. Krebs, M. D., B. Kuntz, M. D., D. Frye, M. D., L. S. Koch, M. D., J. G. Linn, M. D., E. A. Weisser, M. D., H. E. Thorpe, M. D.

The oculists you suggest will be written to. Whenever you want a special type letter sent to any oculist or licensee, just suggest it—and it will be done.

666

Dealer Name

Address

City and State

BAER

JENKINS

PITTS

OPT.

ARCADE

PA.

Co.

Date of Call

5-23-34

Examiner's Name

Remarks  
Optician

Optician or Optometrist?

Lenses or Prospective?

Number of Examiners

Full names of principals or firm, indicate who is dominating sales manager.

Walter S. Baer

Attitude Toward Unions

STYLE A

STYLE D

STYLE B

TRIFOCAL

CATARACT

Character of store or practice? High grade or popular price?

Estimated volume of business annually?

Wholesaler from whom  
he purchases?

Remarks:

Do not license! Spent quite a while telling me not to believe rumors about him saying Buell Opt Co. own him. They do, of course, and he would certainly be a detriment to our list. However, I told him the Licensing Board.

If additional remarks are put on other side, write on back.

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Committee would take it  
under advisement. If I have  
to see him again and sign  
him up to avoid a possible  
friction here, turn it down  
and explain he doesn't meet  
the requirements, etc.

Re Walter S. Baer

We will hold up application if it comes in. Understand Roy that we do not write to any applicant that his application is rejected; that he does not measure up, etc. Applications we do not see fit to approve when presented take the status of "pending" for further consideration. The acknowledgment letter to the applicant is courteous and he has to do his own construing to consider it "bad news." So, whenever you want a fellow to be informed he doesn't measure up, it should be explained orally, with tact. The method we use is on advice of our counsel—and they know the peculiar quirks of law that make it advisable.

Regards,

LVB:MC.

669 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Univis (Att. Mr. Browne).

From R. Marks.

Place Pgh., Pa. Date 5-26-34.

Re Walter S. Baer, not to be licensed

I'm a bit of "On the spot" here. I hate to admit it, but this man is a personal friend of my father's and I also know him quite well. Of course, he cannot be licensed as he will, I'm sure, develop into the worst chiseler in the city. He has only been in business for a month, so give him a chance and he will run Buhl a good race. He's made excellent progress so far. So I'm a bit hesitant in even tactfully "getting out of it." Inas-  
670 much as I won't have time to await your answer I'll have to use my own judgment. I feel I can't ignore his demand. So I shall sign him up but that must be the end of it! Then you can write him the type of letter of which I received a copy. That lets me out and also the Univis Co. Hope this is O. K.

Regards.

Roy.

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COPY

B. Kanstroom, % Goldberg's, Wash., D. C.

Date of Call, 6-6-34. R. Marks.

Wants Univis badly. Promises us 50 pr. per month. Absolutely no advertising on Univis—will get more than regular price, etc. But I'm afraid of him. I believe we'd lose too much in

330 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

prestige and I know of three accounts that would quit us cold. He does have a bad rep. He advertises and that was the excuse I gave him. Told him if he wanted to stop advertising we would let him have Univis, and, of course, he said he couldn't do that! So that's that! If he writes you again, that excuse still holds good!

672 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Uless McDowell.

From G. P. Tully.

Place, 17 Gorham Rd., W. Medford. Date 5/6/34.

Re: W. R. Donovan Co.

This is one of the most unethical places in Boston & certainly not desirable as a Univis licensee. In addition to cutting retail prices, they do a cut-rate wholesale business.

I'm surprised Wilson & Halford would send in a favorable report on this account.

Best regards,

G. P. T.

673 Mr. Roy Marks (Fargo).  
L. V. Browne.

3/18/35.

Following letter from Dr. L. R. Garland, Spencer, Iowa:

"Your registered letter received yesterday. Have referred to "Third" clause in contract and cannot understand your reason for action taken. I have never broken this contract in any manner whatsoever, and if necessary I will swear to it before a notary. So I feel justified in asking for your reason in wishing to cancel."

In a yellow report 2/27/35 you said: "Remove from list. Price-advertising chiseler." We don't have to go into an explanation with him, but if you have any additional specific data, please let us have it for the record in case of the matter coming up further. Mention source of your information if you did not call on him personally.

LVB:MC.



674 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Univis—Att. L. V. Browne.

From R. Marks.

Place Duluth, Minn. Date 3/23/35.

Re L. R. Gartland, Spencer Lake, Ia.

(See your letter 3/18/35.)

Ever since I can remember I've been hearing from jobbers and licensees alike that Gartland was very terrible competition. When they asked me if he were licensed I always said no—intending to go up and investigate the man and see what foundation, if any, there was to the claims that he chiseled. Have been unable to get to him but this trip I found out from our very good Univis licensee, Howard Pierce at Storm Lake, Ia., that his advertising was getting worse and his prices lower. So I thought it  
675 best to cancel. If you want further info on this, such as some of his ads—I can write Pierce and have him send me some.

Gartland has never broken his contract, of course. He has never sold any—at least none of our jobbers have served him.

Let me know if you want me to write Pierce at Storm Lake.

Regards.

Roy.

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CENTRAL STATES OPTICAL CO., INC.,  
Chicago, Ill., March 18, 1935.

No Certificate.

UNIVIS LENS CO.,

Dayton, Ohio.

Attention: J. R. Silverman.

DEAR JACK: Last fall we sent in an application for Univis license for Dr. George H. Post, Decatur, Illinois, which was approved and a sample set sent to him.

Since that time this party has developed into a price advertiser and somewhat of a disturber in that particular locality and while to our knowledge he has not prescribed any Univis lenses, we believe it would be to the best interest of all to remove his name from the list of Univis licensees.

We, of course, do not wish to be identified with this and when writing him, if you decide to follow through with these recommendations, please send us a copy so that we in turn can write him asking for the return of the sample case—or if you prefer

to do so, you can request this in your letter and issue a credit to us when it is received. We believe the latter procedure to be the best.

Very truly yours,

CENTRAL STATES OPTICAL COMPANY,  
By A. G. HAGER.

A. G. Hager.  
OC.

677

MARCH 19, 1935.

CENTRAL STATES OPTICAL CO.,  
*Chicago, Ill.*  
Attention: Mr. A. G. Hager.

GENTLEMEN: Thank you for advising us about Dr. George H. Post, Decatur, Illinois. We are cancelling him immediately. A copy of our letter is enclosed. Please remove the name from your list.

We are making a memo to advise you promptly if he returns the Sample Case to us. If you do not hear from him within a reasonable time you might write him about the item, in order to dispose of the charge.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_

LVB:MC.

Enc.

Copy to R. Marks.

NOTE.—Central States wrote in that since licensing he had developed into a price advertiser and disturber in that locality; that while they had no knowledge of his prescribing any Univis lenses, they felt it to be to the best interest of all to remove.

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APRIL 15, 1935.

DR. CHAS. VAN SIPMA,  
1114 S. Michigan Ave., Chicago, Ill.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in October 1932 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

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Shaler's Name <b>VAN SIGMA</b> <b>(WAS.)</b>	Address <b>1114</b> <b>So</b> <b>AKA</b>	City and State <b>(NGO)</b> <b>ILL</b>					
Date of Exam <b>4-12-35</b>	Examiner's Name <b>Kurarto</b> <b>O.D.</b> <b>Rep</b>	<b>15 1935</b> <b>Hevoka</b>					
Type, as on Examination of 1. Type of Prescription 2. Type of Lens 3. All names of persons in firm, whether or not associated with manager <b>Chas Van Sigma</b>							
Attitude Toward Union <table border="1"> <tr> <td>STILL IN</td> <td>STILL IN</td> <td>STILL IN</td> <td>TRIFLING</td> <td>CATACT</td> </tr> </table>			STILL IN	STILL IN	STILL IN	TRIFLING	CATACT
STILL IN	STILL IN	STILL IN	TRIFLING	CATACT			
Character of store or practice: High grade or popular prices? Estimated volume of business annually? No. dealers from whom he purchases Union?							
Remarks Formerly a high grade optician has gone out of business. Has put in quite a number of signs in his window advertising price of glasses complete at low prices. Spent about an hour. Half trying to convert him but I'm afraid it's not much use. I picked up his 12#							
Additional remarks are put on other side with the word "over" here							

*if not send credit to the whole to the whole through a bank*

*see over look up to credit of credit*

*76*

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certificates & papers in his -  
send him \$90 for the board.  
Get ship it with me.

In view of his advertising activities  
I feel he should be removed -  
although I do feel sorry for the  
fellow in a way. His business  
has slipped away so fast due to  
a Richholy place near him, that  
he feels he has to do something  
He chose this. And thinking to do  
it but feeling it was the only  
thing he could do. —

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Dealer's Name

Address

City and State

COPY

Wm. P. Barker

708 Church St.  
Evanston, Ill.

Date of Call

5-13-35

Salesman's Name

R. Marks

Optician or Ophthalmologist?

License or Prescription?

Number of Examinations?

Full names of principals in firm, indicate who is dominating active manager:

Removal recommended. He is dispensing to retail patients at Rx cost plus fitting charge. This, of course, brings his glasses very low. Probably will uphold the price of Univis, but I believe it wiser to remove rather than take the chance of our Reps. believing he is doing the same thing on Univis. Discussed with Eager

STYLE "A"

STYLE "D"

STYLE "B"

TRIVOCAL

UNIVIS

Character of store or practice? High-grade or popular prices?

Estimated volume of business annually?

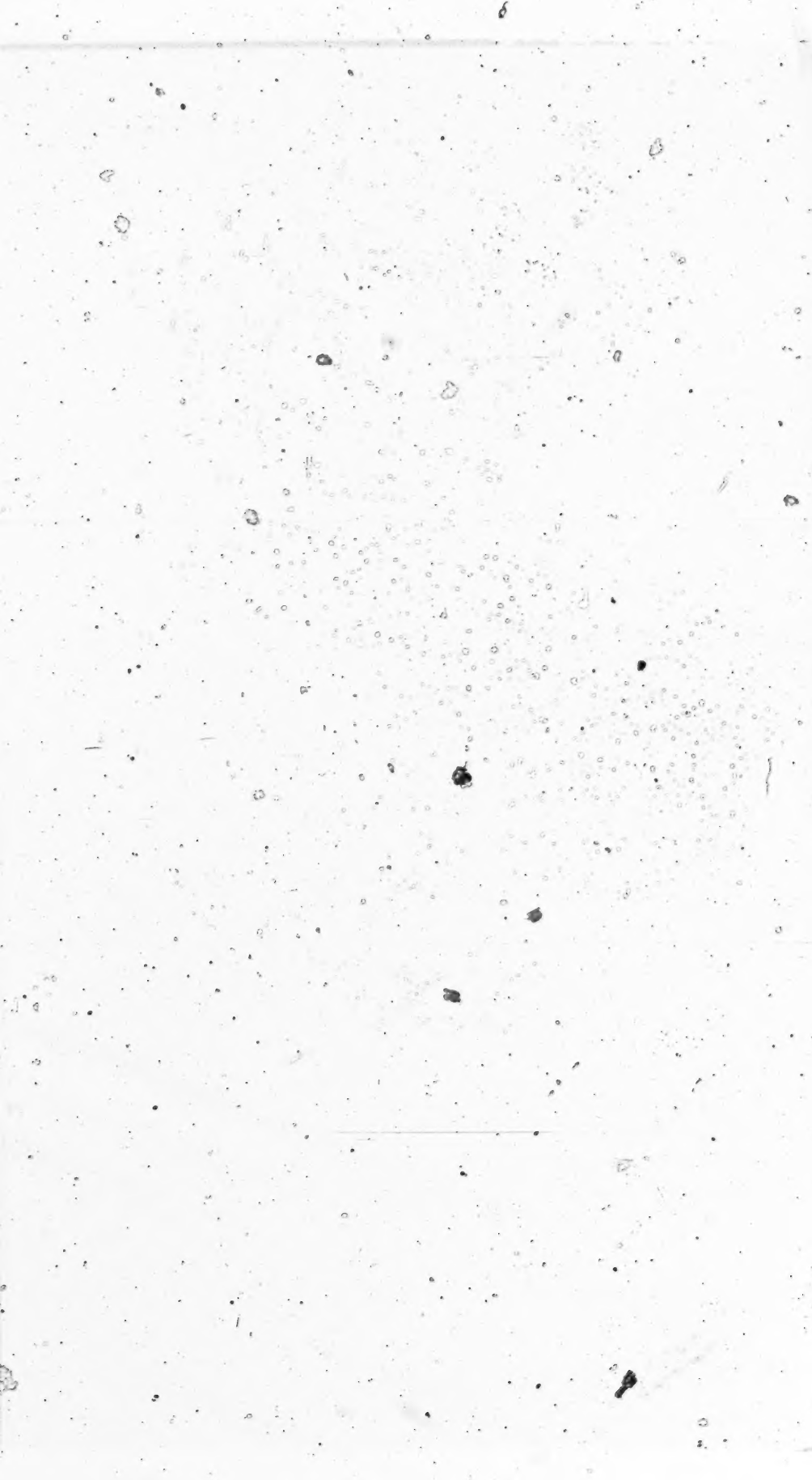
Wholesaler from whom  
he purchases Univis

Remarks

If additional remarks are put on other side, write the word over here

p. 2





We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

By                     ,  
THE UNIVIS CORPORATION,  
Vice President.

LVB: MC.

Reg. No.           .

682

MAY 14, 1935.

Mr. WM. P. BARKER,  
*Evanston, Ill.*

DEAR MR. BARKER: In view of the circumstances discussed with you by Mr. Marks of The Univis Lens Company, it is advisable to reconsider the approval recently given to your application for Univis franchise.

In accordance, therefore, with the clause marked THIRD of the contact entered into we accordingly notify you that the license issued to you under Univis patents is hereby revoked.

Please return the Univis Bifocal Sample Case and other material with which you were supplied.

Regretting the circumstances that necessitate this action, we are  
Sincerely yours,

By                     ,  
THE UNIVIS CORPORATION,  
Vice President.

LVB: MC.

Reg. No. —.

683

DECEMBER 6, 1935.

Mr. H. K. WRIGHT,  
*Barnett & Ramel Optical Co., Kansas City, Mo.*

DEAR MR. WRIGHT: The matter with Dr. C. C. Morrison is a tough one to take up in a letter, for several reasons. However, it is tackled to give him a good idea of what holds up his application—relieving you of any responsibility. It is possible he will say that regardless of what he does with other lenses and optical goods, he will maintain the price on Univis. That won't do. There are "price-cutters" galore who would rigidly adhere to Univis contract if we gave them franchises, but their competitors wouldn't believe it—and what the dealers believe about what is going on is what makes or mars Univis prestige in the locality.

Sincerely yours,

By                     ,  
THE UNIVIS CORPORATION,

LVB: MC.

Copy: Marks.

DECEMBER 6, 1935.

C. C. MORRISON, M. D.,

*Chanute, Kansas.*

DEAR DOCTOR: We have received from Barnett & Ramel Optical Co. an inquiry as to the status of your recent application for Univis franchise and requesting that we advise you direct, as well as themselves—also stating that you have sent them an order for a pair of Univis lenses.

Univis wholesalers are obligated by their contracts to supply Univis lenses to licensees only.

Action on the contract submitted for you has been deferred for the time being. A Univis representative who called on you recently reported that you proposed dispensing glasses and frames at practically wholesale prices. Such a method is out of line with the purposes of the Univis patent licensing policy, and it has not been our custom to offer franchises to those dispensing on that basis.

We are asking our representative to check into the matter on his next visit to the territory to report what has been the development on this phase. Under the circumstances, we are sorry to say that we cannot recommend to the Licensing Committee immediate acceptance.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

EFB:MC.

Copy: B. &amp; R; Marks.

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C. C. Morrison, M. D., Oculist.

Margaret Sparks, Frame Specialist, Tioga Inn, Chanute,  
Kansas.

DECEMBER 7, 1935.

UNIVIS CORPORATION,

*Dayton, Ohio.*

GENTLEMEN: Yours of the 6th at hand and contents noted and accepted under the same spirit in which you accept my application for your alleged franchise.

You may take it and burn it. All Rx for Univis lens are here-with withdrawn. You will favor me by rejecting any future Rx I may in my weaker moments submit. As to this practice here, I will run it as I see fit, even to giving my friends glasses if I so desire. I don't like you.

C. C. MORRISON,

C. C. Morrison, M. D.,

*Free and uncontrolled.*

Copy to B. &amp; R.; Marks.

686 Company Correspondence, The Univis Lens Co.:

(Confine each communication to one subject)

To V. H. Hancock.  
 From I. McDowell.  
 Date 8-17-36.

Re Lee C. Haney, O. D., 817 15th St., Denver Colo.

Columbian Bifocal Co. (C. H. Thompson) sends contracts and sample-case order with following letter:

"We hand you herewith application for Lee C. Haney to sell Univis Lenses. Mr. Haney started in business 8 yrs. ago in Denver in a very small store, and during the first few months he was in business advertised prices. These prices being low. After the first few months he has never done any advertising in any way, and about 2 yrs. ago moved into a larger store on the ground floor. While we do not say that he conducts a real high class business, we know Mr. Haney well enough to know he would maintain prices after he signed the contract."

You reported substantially same, adding that he *might* not be satisfactory to other licensees. The last sentence of letter is a nice out for us if we want to turn this down without further inquiry. Can you write *some one* there—or to whom should we write?

Regards,

L. V. B.

LVB:MC.

I don't believe I'd okeh Haney—our present Denver biz is too sweet to jeopardize. Suggest the old yarn of "we'll instruct our representative to call upon you the next time, etc." V. H. H.

8-22-36.

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SEPTEMBER 29, 1936.

DR. CALVIN J. LOOSER,

*F. & M. Bank Bldg., Eodi, California.*

DEAR MR. LOOSER: We are going to write you very frankly about your Univis license. Our sales reports covering a considerable period of time fail to show that you are selling Univis Bifocals. Naturally, there must be mutual benefit for continuance of a licensing arrangement. The benefit to us as licensor can only come through sales by you as the licensee.

We wish to check two points with you:

1. If our records are in error and you are selling Univis lenses, please advise us from what wholesaler you have been making purchases;

2. If you have not been selling Univis, but desire your license status to be continued, we suggest that you write us accordingly, and include an approximate estimate of the number of pairs you will be able to use during the remainder of this year.

The Univis franchise becomes increasingly valuable to our active licensees and, frankly, instead of having large numbers we are interested in restricting the list to those who make active use of the franchise.

We will appreciate the courtesy of an early reply.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC.

Copy: R. E. M.

688

NOVEMBER 6, 1936.

CALVIN J. LOOSER, O. D.,

218 F. & M. Bank Bldg., Lodi, California.

DEAR DOCTOR: This is to acknowledge receipt of your letter of the 2nd inst.

In accordance with clause marked "Third" in the contract with you, we hereby give you notice that the patent license issued to you by this Corporation is cancelled this date.

Please return to us the Certificate and other Univis materials in your possession.

Regretting the connection did not develop more satisfactorily; we are

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC.

Copy: Merville.

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R. E. Merville.

L. V. Browne.

11-6-36.

Following from Calvin J. Looser:

"In answer to your letter of the 29th, I will inform you that I do not sell Univis lenses, and that you may discontinue my license. I discontinued selling Univis immediately upon finding a fellow Optometrist in Lodi using Univis lenses and advertising them, when I had been given the exclusive license for Univis in this immediate territory."

We will accordingly carry "Remove from list" notice in the next Notification Bulletin.

LVB:MC.



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DR. CALVIN J. LOOSER,  
Lodi, Calif., Nov. 17, 1936.

THE UNIVIS CORPORATION,  
Dayton, Ohio.

GENTLEMEN: As per your request, I am returning contract and papers, which I still have.

I am sorry that I could not depend on the agreement made by your representative and regret that my termination with your firm had to come about in this way.

Yours truly,

CALVIN J. LOOSER, O. D.,  
Calvin J. Looser, O. D.

CJL:MH.

Optometry, the science that preserves the only two eyes you'll ever have.

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N. P. BENSON OPTICAL COMPANY, INC.,  
QUALITY PRESCRIPTION SERVICE,  
La Crosse, Wisconsin, October 8, 1936.

THE UNIVIS CORPORATION,  
Dayton, Ohio.

Attention: Mr. L. V. Browne.

DEAR MR. BROWNE: In regard to J. A. Amodt, O. D., we could not recommend him as desirable at all: If you place him on the Univis list, you may as well place every optometrist in the land on the list. He is the most unreliable price cutter there is to be found.

We could say plenty more; but we believe we have said enough.  
Sincerely yours,

N. P. BENSON OPTICAL CO., INC.,  
By OTTO I. NELSON,  
La Crosse, Manager.

OFN:MB.

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NOVEMBER 16, 1936.

DR. CARL HALTOM,  
Corpus Christi, Texas.

DEAR DOCTOR: This is to acknowledge receipt of your application for Univis franchise on the nomination of Atlas Optical Company. In accordance with our procedure, this will be presented to the Licensing Committee for its consideration, and you will be notified when action is taken.

Thanking you for your interest, we are  
Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_.

LVB:MC.

NOVEMBER 16, 1936.

ATLAS OPTICAL CO., INC..

*New Orleans, La.*

Attention: Mr. Lloyd H. Robbert.

GENTLEMEN: Regarding the franchise application for Carl Haltom, Corpus Christi, Texas: we are sorry to say that this cannot be given approval. Confidentially, previous information was that this concern was operating on a cut-price basis and so advertising.

Under the circumstances, this will be held up for the time being, and we will have our representative check further. In the meantime we are sending acknowledgment of receipt of the application to Mr. Haltom.

Yours very truly,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB: MC.

Copy: Hancock.

694 Company correspondence, The Univis Lens Co.

(Confine each communication to one subject.)

To V. H. Hancock (Roanoke).

From L. V. Browne.

Place, ----- Date, 11-16-36.

Re: Carl Haltom, 427 Mesquite at Peoples, Corpus Christi, Texas,  
application

Favorable information blank from Atlas Optical Co. with sample case order and the following letter:

"We are enclosing herewith application blanks and order for a Univis sample case for Carl Haltom, Corpus Christi, Texas. According to information received from our representative, Mr. Bolles, we think Dr. Haltom will make a very desirable Univis account. Dr. Haltom also promised our representative that in the near future he will place an order for a stock of Univis blanks so as to qualify as a Finishing Licensee. We trust to receive a favorable reply."

In 1933 you reported him a cut-price advertiser and that his Soft-Lite license had been taken up. In April 1936 you had him on the N. G. list.

Let us know if there has been a reform of his methods that would make him at all a possibility for Univis license.

Regards,

E. V. B.

LVB: MC.

Carl Haltom, is decidedly pernicious price cutter by nature. N. G. now & forever,

V. H. H.

695 V. H. Hancock (Roanoke).  
L. V. Browne.

11-6-36.

Re: L. C. Heck, Salina, Kansas

Following from Mr. Duffens, and so we reply to Heck with the "waiting list" letter:

"Yes, L. C. Heck, of Salina, applied to us for a Univis license. The set-up in Salina is the same as is often incurred in other cities in that L. C. Heck is a disturbing element, usually underselling the rest of the boys considerably.

"He is now using a few Panoptiks. Consequently, the balance of the desirable accounts in town have switched to Univis. We do not feel that Heck would use over five pair a month, if that many, and as our Univis business is considerably more than that with the other accounts we feel it is not advisable to jeopardize the business we already have for this one problematic account.

"If we have not fully explained the situation, we would appreciate hearing more from you."

LV: MC.

696

DECEMBER 28, 1936.

MILWAUKEE OPTICAL CO.,  
Milwaukee, Wis.

Att: Mr. Chas. Tribe.

GENTLEMEN: Regarding the franchise application for J. A. Anodt, O. D., Sparta, Wis., we had a direct request from him for a license several months ago, checked on him and wrote him that it would not be feasible to license him.

Confidentially, the reports concerning him were decisively unfavorable, and the statement was made, "If you place him on the Univis list you might as well place every optometrist in the land on the list."

We are unable to approve the application and are enclosing copy of letter to the applicant.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LV:MC.

Copy: Marks.

697 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To: L. V. B.

From: W. R. S.

Place: Phila., Pa. Date: 1/28/37.

DEAR MR. BROWNE: It pains me to have to pass the buck, but I feel it is best in this instance.

Enclosing Lamb Opt. Co. ad which tells the whole story. This is a store recently opened in Norristown, owned by Harry L. Lamb, O. D. (Licensee), of 4734 Frankford Ave., Phila., Pa.

698 Harry Lamb also has price in his window now & is tying up this "ad." Lamb probably would never cut a Univis price—he's a good, upright, honest gentleman. He is probably another unfortunate "trying to meet a local condition." He must come off the list, & please see to it that Limeburner is notified of removal. Both at 1923 Chestnut St. & their Norristown Branch. Very important. Please send me copy your letter & Dr. Lamb's answer (if any).

Best regards,

W. R. S.

P. S.—Try to get back samples & process exhibit. Particularly the process exhibit.

699

JANUARY 30, 1937.

HARRY L. LAMB, O. D.,

4734 Frankford Ave., Philadelphia, Pa.

DEAR DOCTOR: We are sorry to learn that you have adopted a method of special price advertising and merchandising of glasses that we consider a disqualifying factor in the consideration of an applicant for Univis franchise.

Under the circumstances it becomes necessary to terminate your franchise.

In accordance with the contract clause marked "Third," we hereby notify you that the license issued to you under Univis patents and trade-marks is cancelled.

Please return to us Univis samples, Process Display Board, and other Univis materials that were supplied to you.

We regret the circumstances making this cancellation necessary.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, *Vice President.*

LVB:MC.

Reg. No. —

Copy: MTS.

700 G. P. Tully (Syracuse).

L. V. Browne.

2/16/37.

We have received from Max Zadek, Inc., separate signed contracts for Dr. Carl C. Chase and Dr. Wm. M. Joyce, 121 Main St., Middletown, Conn.—the accompanying letter calling for sample cases to be sent them.

These are the oculists who, you reported, began their own dispensing last Fall and told patients that opticians charge too much for optical merchandise. Will you please check on them again when you can get to it to learn if they are cutting prices and definitely undesirable for Univis licensing.

Regards,

LVB:MC.

701 Dealer's Name \_\_\_\_\_ Address \_\_\_\_\_ City and State \_\_\_\_\_

D. H. Lombard, Minneapolis, Minn.

Date of Call 2/14/37

Salesman's Name, R. Marks

Optician or Optometrist? \_\_\_\_\_

Licensee or Prospective? \_\_\_\_\_

Number of floorman? \_\_\_\_\_

Full names of principals in firm; indicate who is dominating active manager: \_\_\_\_\_

(Revoke.) \_\_\_\_\_

Attitude toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract

Character of store or practice? High-grade or popular prices?..

Estimated volume of bifocals annually? ..

Wholesaler from whom he purchases Univis ..



Remarks: Remove from list. Credit jewelry store—see attached ad.

If additional remarks are put on other side, write the word "over" here -----

702

FEBRUARY 17, 1937.

Dr. D. H. Lombard,

*c/o Max A. Kohen, Jeweler, 35 S. Sixth St., Minneapolis, Minnesota.*

DEAR DOCTOR: In view of the transfer of your practice and the fact that the Univis patent franchise is not transferable, it is proper to discontinue the license.

Therefore, in accordance with the clause marked "Third" in the contract with you, we hereby notify you of the termination of the Univis franchise issued to you.

We trust that at some future time we may have the pleasure of renewing the connection.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_ Vice President.

LVB:MC.

Reg. No. —.

Copy: Twin City  
Marks.

703

Roy Marks (Indianapolis).

L. V. Browne.

2/27/37.

Re: D. H. Lombard, Mpls.

Following from Nordland with Lombard application (not signed by Twin City):

"We received the copy of your notice to Dr. D. H. Lombard in which you have informed him that his license has been cancelled, and in this connection we have removed his name from our list as a licensee. Naturally we have not made any statements with regard to amplifying your letter to him, etc., for his removal, and he has requested us to send in a new application which we are enclosing. We are doing this of course only at his request and trust that you will handle the matter as you see fit and without embarrassing us in our position.

"May I also ask that you send us direct a prism demonstrator for a Dr. Benj. E. Nelson, Buffalo, Minn., at your earliest convenience."

You can tell him the "why" by phone in off-hand remarks on the advertising credit—which we can't write about.

Regards,

LVB:MC.

704

APRIL 30, 1937.

Mr. R. F. DUFFENS,

*Quinton-Duffens Optical Co., Topeka, Kansas.*

DEAR MR. DUFFENS: We are very sorry if an error was made in the cancellation of license of Drs. Enns & Harms. The action was taken on a report by Mr. Hancock, who was in Newton recently. The matter was not merely inactivity, but also involved pricing methods and instance of violating Univis contract by cutting price. We do not know that Mr. Hancock discussed the situation with any member of your organization, but would assume that he did so.

We appreciate your suggestion and will be very glad to have your co-operation in securing the activity of any licensees before removing for non-use.

We are asking Mr. Hancock to go over the matter fully with you when he sees you personally.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC.

Copy: VHH.

705 Company correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To H. E. Knierim (Wheeling, W. Va.)

From L. V. Browne.

Place \_\_\_\_\_ Date 5/19/37.

REMINDER: We have been holding a franchise application and sample case order sent in by Triangle Optical Co. for Dr. C. P. Doty, Optometrist, 1512 W. Market St., Wheeling, with favorable report. We wrote Dr. W. H. Hayes inquiring about his eligibility, but received no answer, possibly because Hayes does not approve but did not want to say so. Please check on Doty and let us know if contract should be approved.

L. V. B.

LVB:MC.

Send Toulmin letter (copy to Triangle).

DEAR MR. BROWN: We have investigated the above and find him undesirable. He is a chisler, cuts prices and takes in old

frames and mountings for credit. He does not advertise price. I would not recommend him as a Univis licensee.

Regards,

H. E. K.

706

MAY 27, 1937.

G. & F. Stannard Co.

*Cincinnati, Ohio.*

GENTLEMEN: We suggest that you advise your salesman covering West Virginia not to solicit H. O. Fisher, M. D., Parkersburg, W. Va., for Univis license. One of our representatives saw him the other day and discussed Univis as a prospective licensee, but later learned there is objection to him on the ground that he is prescribing in a co-operative arrangement for customers of Ross Opticians, cut-price advertisers. Under the circumstances it would be better not to have the application come up. We write you as we understand he gets some of his prescription work from you.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB: MC.

Copy: HEK.

707

BARNETT & RAMEL OPTICAL COMPANY, INC.,

*Kansas City, Missouri, May 1, 1937.*

THE UNIVIS LENS COMPANY,

*Dayton, Ohio.*

GENTLEMEN: This is to advise that Dr. R. E. Brobst, O. D., of Knoxville, Iowa, is going to work for the Beck Optical Company in Waterloo, Iowa, who are more or less a cut-rate concern. We, therefore, suggest that Dr. Brobst be taken off the Univis list.

Very truly yours,

BARNETT & RAMEL OPTICAL COMPANY,

H. A. THOMPSON,

H. A. Thompson,

*Stock Department.*

HAT: EP.

Revoke account change of practice.

Look up—who licensed?—When? Sales record?

Licensed 1/30/32—Wahl-Carlson. Buys thru B & R. No sales since July 1936.



710

Order's Name UNDESIRABLE Address LOUISVILLE, KENTUCKY  
J.T. JOHNSON  
679 S. THIRD ST  
7-29-37 V.H. Hancock  
 Order or Receipt No. Rep. Cancelled 6-29-37  
 Name of Supplier Is cut price man - located in "cut price row" in Louisville.  
 Full name of principal in this column who is supplying your order  
 Sample Toward Order  

STYLE 1	STYLE 2	STYLE 3	VERICAL	OUTBACK

 Character of order to product 1.50 chip  
 Estimated volume of order Probably would have been  
 Wholesale price of product Paraphrase of Chicago  
 Remarks  
 If different products are put in this case, make the word "other" here



708

MAY 3, 1937.

BARNETT & RAMEL OPTICAL CO.,  
Kansas City, Mo.

Attention: Mr. H. A. Thompson.

GENTLEMEN: As suggested in your letter of the 1st inst., we are cancelling the license of R. E. Brobst, O. D., Knoxville, Iowa.

Thank you for bringing this to our attention.

Sincerely yours,

THE UNIVIS CORPORATION.

MCD: M.

Copy: VHH.

Mr. Hancock: B. & R. reported Brobst is going to work for Beck Opt. Co., Waterloo, Ia., more or less cut-rate.

709

Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To: V. H. Hancock (Birmingham).

From: L. V. Browne.

Place: \_\_\_\_\_ Date: 6/4/37.

Revoke.

Re: J. T. Johnson, O. D., Louisville, Ky.

Signed up in 1931 by C. J. Wagner (then Univis Lens Co. salesman), with Blue Grass Optical Co. as distributor. Sales reports show nothing. Call reports by Wagner in 1932 (and Roy Marks, 1934) show he had price fear and offered only cheap bifocals; both thought they had straightened him up to some extent. Over 65 years old.

L. V. B.

LVB: MC.

Brownie, you sound like F. D. R.!

And, anyhow, it isn't the Supreme Court I want him offa—it's the Univis list.

Is not desirable.

V. H. H.

346 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

711 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To: V. H. Hancock (Rochester).

From: L. V. Browne. Date: 6/29/37.

Re: J. T. Johnson, 519 S. 3rd, Louisville, Ky.

Will you kindly let us know what the objection to him is—this for our information in case there are any inquiries from him or others. Also, who made the objection? We are revoking, with the usual comment of failure to develop satisfactorily. As to the age phase, one of the boys mentioned it—no doubt by way of indicating that you can convert 'em to New Deal ideas after passing 65.

Regards,

L. V. B.

LVB: MC.

See attached yellow report, V. H. H.

V. H. H.

712

JUNE 29, 1937.

BLUE GRASS OPTICAL CO.,

*Lexington, Ky.*

GENTLEMEN: This is to advise that the contract of Dr. J. T. Johnson, Louisville, Ky., has been cancelled this date; please remove his name from your list of Univis licensees. Copy of letter is attached.

Yours very truly,

THE UNIVIS CORPORATION.

MCD: M.

Enc.

Copy Hancock.

713

JUNE 29, 1937.

Dr. J. T. JOHNSON,

*Louisville, Kentucky.*

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in September 1931 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return the metal certificate and other Univis material supplied to you.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, *Vice President.*

LVB:Mc

Reg. No. —

Copy: Blue Grass.

714 Roy Marks (Mpls.)  
L. V. Browne.

11/17/37.

Re: D. J. Lefkoe, Chicago

As requested in your telegram we are sending registered cancellation notice to the above. Two copies are enclosed. Notice also sent to Chicago distributors. I don't know what it is all about, but make the guess he ordered for non-licensee.

715 735 JUNIOR TERRACE,  
Chicago, Ill., November 22, 1937.

T. E. MILLER, O. D.,  
Elgin, Ill.

DEAR DR. MILLER: Inasmuch as I have been away for the past week, I didn't receive your postal card until last night, when I returned.

I am very pleased to report that we were able to check this very thoroughly and it worked exactly as we had planned. Nelson sent the job into New Era and they immediately sent it out to one of their accounts who is a Univis Licensee. He sent the job into Central States Optical Co. and they immediately informed me that the job had come into them for repair from Dr. Lefkoe, here in Chicago. I immediately wired the Univis Corp. and asked them to revoke his license, which they did—and I am enclosing a copy of the cancellation letter. Please keep this whole thing confidential.

I was pleased to be able to cooperate in this and am also very grateful to you, Dr. Miller, for making it possible for us to track this thing down. Any time at all that you hear of things like this, please let me know immediately and I will do everything I can to clear it up. It is only in this way can we hope to make our policy work and if it does work, you have something to put on

your patients that is REALLY protected. Thanks again. I am enclosing a check for \$4 to cover your expense in the matter.

Very-truly yours,

UNIVIS LENS CO.,  
By ROY MARKS,

716

MAY 26, 1937.

THE UNIVIS LENS COMPANY,  
Dayton, Ohio.

It is understood that if I am granted a Univis License I will make proper use of the privilege extended to me by regularly prescribing and serving my patients with Univis bifocals and not use same merely for duplicating purposes. I will use on an average a minimum of ----- pairs each month.

(Signed) BINYON OPTICAL CO.

My average monthly number of Bifocal Rx's is ----- pairs.  
J. R. Binyon.

717 B-1—written per Rem instructions 10/5/38.

OCTOBER 10, 1938.

Dr. A. E. MATTERN,  
401 Morgan Bldg.,  
Portland, Oregon.

DEAR DOCTOR: We are sorry to note the lack of Univis sales by you, according to our monthly sales reports. What the reason may be we cannot conjecture, as Univis Bifocals are the best of bifocals and the Univis policy is as good as ever.

Our selective licensing system eliminates us from large volume business, so we obviously have to depend upon the small percentage of the optical profession whom we do license for our sales. It is, therefore, apparent that we are more affected by your not using Univis each month than we would be if we sold all of the retail optical outlets.

The Univis policy is a good one and Univis Bifocals are the best of the modern bifocals. Of course, the Univis license is an asset to you only in proportion to the use you make of it. A licensee stated in a letter to us: "I wish I had made application for a Univis license five years ago, for if I had I would now have 800 Univis wearers instead of 800 Kryptok wearers who are getting their duplications for \$4.00 to \$5.00 per lens."

May we please have an expression from you as to whether you wish to continue the Univis franchise and if you will use Univis bifocals in the future?

Yours very truly,

THE UNIVIS LENS COMPANY.

EFB: ES.

"Cancel"—REM 11/17/38.

718

DECEMBER 7, 1938.

Dr. A. E. MATTERN,

401 Morgan Bldg., Portland, Oregon.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in July 1931 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return the metal certificate and other Univis material supplied to you.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB: Mc.

Reg. No. —

Copy: Riggs, Portland.

719

OCTOBER 21, 1938.

N. H. RAGOVY, O. D.,

56 N. Tenth St., Philadelphia, Pa.

DEAR DOCTOR: We have received from Howitt Optical Company your application for Univis contract. The information we have is satisfactory, we are pleased to say, from the standpoint of ethics, in accordance with our policy of selective licensing.

There is another phase on which we would like to have information. That is the mutuality of benefit to be derived from the proposed connection.

Our policy, in the interest of protection of the ethical element, eliminates price-cutting or otherwise undesirable optical outlets. We restrict licensing to a small percentage. You will appreciate, doctor, that in doing this it is essential that those we license shall be active users of Univis, as it would involve loss for us if the licensee simply supplies duplicates or an occasional pair on request of patients.



So we ask for an expression as to your interest in prescribing Univis. We enclose an estimate slip for your convenience and ask that you fill it in and return it with additional comments you may wish to offer:

On receipt the application will be submitted to the Licensing Committee for prompt action.

Thanking you in anticipation, we are

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB:MC.

Copy: MTS.

720

AUGUST 1, 1940.

ALBERT ZURCHER, O. D.,  
*Marcelene, Missouri.*

DEAR DR. ZURCHER: We have received from Barnett & Ramel Optical Company your application for Univis contract. We appreciate your interest very much.

There is one phase on which we would like to have information: that is the mutuality of benefit to be derived from the proposed connection.

Our policy, in the interest of protection of the ethical element, eliminates price-cutting or otherwise undesirable optical outlets. We restrict licensing to a small percentage. You will appreciate, doctor, that in doing this it is essential that those we license shall be active users of Univis, as it would involve loss for us if the licensee simply supplies duplicates or an occasional pair on request of patients.

So we ask for an expression as to your interest in prescribing Univis. We enclose an estimate slip for your convenience and ask that you fill it in and return it with additional comments you may wish to offer.

On receipt, the application will be submitted to the Licensing Committee for prompt action.

Thanking you in anticipation,

Sincerely yours,

THE UNIVIS CORPORATION.

MCD:Mc.

Copy: B&R.

721

Peoples Optical Co., Chicago, Ill.

Date of Call, 11-20-38.

Salesman's Name. RMarks.

Optician or Optometrist? Wholesaler.

Licensee or Prospective?-----

Number of floormen? See Corp. P file, 11/38.

Full names of principals in firm: indicate who is dominating active manager:

Attitude toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract
-----------	-----------	-----------	----------	----------

Character of store or practice? High-grade or popular prices?—

Estimated volume of bifocals annually?—

Wholesaler from whom he purchases Univis.—

Remarks: This jobber is absolutely NG and is one of the worst in the city. Plus the fact that they have kicked Univis around a bit, claiming they can supply—hence I doubt their sincerity in wanting price controlled items as they have exhibited no respect for same.

Under no circumstances is a license to be considered.

If additional remarks are put on other side, write the word "over" here—

722

THE UNIVIS CORPORATION,  
Dayton, Ohio, December 27, 1938.

W. F. MANSFIELD, O. D.,

62 Main St., Newport, New Hampshire.

DEAR DOCTOR: In view of your announced change of policy regarding the dispensing of glasses, making impractical the performance of provisions of your contract for dispensing of Univis lenses, it is appropriate that the contract be terminated.

Therefore, in accordance with the clause marked "Third" in the contract with you, dated August 22, 1932, we notify you that the license issued to you under Univis patents is hereby cancelled.

Please return the Univis certificate and other Univis materials with which you were supplied.

Yours very truly,

THE UNIVIS CORPORATION,  
By L. V. BROWNE, Vice President.

LVB:Mc.

Reg. No.—

12/29/38.

UNIVIS Co.

I have always maintained the price provisions of the Univis policy in dispensing these lenses. I have dispensed too many of these and will have too many replacements to make to have

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you arbitrarily cancel this contract. Who says that I have not conformed to the terms, and if none speak forth, why do you take this action?

Sincerely,

W. F. MANSFIELD.

722

DECEMBER 27, 1938.

MR. J. LEE SANFORD,

*Burleigh Optical Co., Tilton, New Hampshire.*

DEAR MR. SANFORD: We are returning to you herewith the clipping you sent of advertisement by W. F. Mansfield. His Univis license is being cancelled.

We appreciate your bringing this to our attention.

With best wishes for a Happy Prosperous New Year, we are  
Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB: Mc.

Copy: Tully.

724

W. S. MANSFIELD, OPTOMETRIST,

62 MAIN STREET,

Newport, N. H., Dec. 30, 1938.

UNIVIS LENS CO.,

GENTLEMEN, I thought I would write you a bit more regarding your action in cancelling my license.

Whatever rate schedule I may have regarding ordinary lenses have not applied to Univis, which I have used to quite an extent with my better clientele.

However, with ordinary lenses, such as Kryptoks, it is suicidal to charge full rate for replacements, as there are two local jewelers who are not even opticians, who replace lenses and have continually charged less than the "regular rates" and have taken many of my patients lens repairs.

However, I have charged regular minimum rates for Univis and do not think you should cancel this contract without just cause, and especially I should be allowed to replace my own patients' lenses.

You cannot control the policies of yo'r distributors in other matters than Univis, as we must have clinic rates to supply the poor with glasses at low prices. This fact would, I believe, be evident if it was necessary to get an opinion from the Department of Justice or that Department having control of the anti-trust laws.

Sincerely,

W. F. MANSFIELD.

725

DEC. 31, 1938.

WILSON & HALFORD OPTICAL CO.,  
*Boston, Mass.*

Attention Mr. George M. Wilson.

GENTLEMEN: We were very sorry to cancel the Univis license of Dr. W. F. Mansfield.

However, it was his own action that made it necessary. He advertised all glasses at reduction of approximately one-third off retail prices. As you know, we do not license retailers who follow such a policy. We have received a reply from Dr. Mansfield stating that he never sold Univis at less than established price. However that is beside the question. Even if he had stated in the advertisement that exception would be made regarding price of Univis, it would still be an objectionable situation. In advertising all glasses at the reduction, he promised to readers a reduction that could not be made without absolute violation of contract.

We regret the change of his pricing methods.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_.

LVB-S

Memo to Mr Tully:

Mr. Wilson said conditions in Newport have been very bad, mills not doing much; guessed Mansfield has had tough time; thought this information might possibly cause us to reconsider decision.

(How can we continue a man advertising cut-price on all glasses?)

726

G. P. Tully.

L. V. Browne.

1/9/39.

Re: W. F. Mansfield, Newport, N. H.

Enclosing copies of several communications from above. He promises, you will note, to discontinue the cut-price advertising. It is a phase we don't want to be writing about at length, excepting as it refers to our own contract.

As it would take time to get up there personally, suggest that you talk to him on the telephone regarding re-instatement. He could of course adjust his prices in general to meet the scale of his competitors, but if he advertises cut prices he of course puts himself in the class that is not acceptable for Univis licensing, as you can explain to him.

After talking to him, let us know if you recommend his re-licensing. And if this is done, capital should be made (with Distributors and licensees) of our having promptly taken steps to clear a cut-price advertising situation. Please let us have your report as soon as possible.

Regards,

LVB:Mc.

727 Geo. P. Tully.  
L. V. Browne.

1/10/39.

Re: W. F. Mansfield, Newport, N. H.

Yesterday I wrote to the above and also to you about telephoning him. Your memo of the 7th arrived late yesterday afternoon when I was away and Miss McDowell held up mailing until this morning. I think your view about not reconsidering certainly would apply if he persisted with his plan, but the fact that he has backed down completely alters the situation.

Suggest that you telephone him as planned. If he agrees to eliminate the cut-price advertising he can be re-licensed; if, on talking to him, you think he ought not to be taken on, tell us so. It looks like our action has cured him to some extent and we can give him a chance to prove that it has been effective. Enclosing copy of another letter from him.

Regards,

LVB:Mc.

728

JANUARY 25, 1939.

DR. F. J. MUND,  
*Leadville, Colo.*

DEAR DR. MUND: For years there were only two bifocals for the trade to use; the principle of both was nearly the same and all who fitted bifocals had to use the same type of lenses for all prescriptions and patients. Now the series of Univis segments—of which there are twenty-one in number—permit the Univis licensee to specialize in bifocal work. A Univis licensee who is really interested can become a "bifocal specialist," and when one considers that 80% of the optical profession cannot use Univis bifocals (because of our licensing system), the opportunity is great for those who have the initiative to select the proper segment for the patient's particular prescription and vocation.

The important Univis patents have twelve years more to run. It really is good business to prescribe Univis bifocals. A licensee in California wrote us recently, "I wish I had made application for a Univis license five years ago, for if I had I now would have 800 Univis wearers on my records instead of 800 Kryptok wearers



who are getting their lenses duplicated at competitive prices without much profit to myself. I know that the Univis prices will guarantee me a substantial profit on both new lenses and duplications."

If you use Univis bifocals you are sure that the future holds no price competition; besides, your patients will be much better pleased with the modern bifocal and pleased patients are your greatest asset. When your patients know that you are one of the few who can supply this specialized bifocal service they will respect your good offices all the more.

Our selective licensing system eliminates us from large volume business; justification for the policy confining our product to 20% of the profession can only come from fullest co-operation of this selective group. We are sure we will note your increased interest in Univis bifocals if you seriously consider the advantages to you and your patients.

Sincerely yours,

THE UNIVIS LENS COMPANY.

ESJ:es.

729

FOX OPTICAL COMPANY,  
303 LEMCKE BUILDING,  
Indianapolis, Indiana, Jan. 27, 1939.

UNIVIS LENS Co.,  
Dayton, Ohio.

Attention of Mr. L. M. Browne.

DEAR SIRS: We are just in receipt of information from our traveling representative that Homer R. Gettle, Fort Wayne, Indiana, who is a Univis licensee, has been selling Univis lenses to professional people at less than the suggested resale price.

It has been suggested that this party be shopped and the party who does the shopping assume the title of osteopath of some similar profession as it has been reported that that type of professional man has been buying Univis as low as \$12.00 for "R" segments.

These practices are in violation of the Univis contract and we are anxious to see a condition of this kind remedied for the benefit of the other licensees who maintain a rigid price schedule.

If we can be of any assistance we shall be glad to have you call on us and in the meantime we would appreciate your advices regarding the outcome of this investigation.

Assuring you of our co-operation, we remain,

Very truly yours,

ELMER J. FOX,  
FOX OPTICAL COMPANY.

EJF:HV.

730

FEBRUARY 24, 1939.

HOMER R. GETTLE, O. D.,  
805 Calhoun St., Fort Wayne, Indiana.

DEAR DOCTOR: According to a report from one of our Distributors, complaint was made by a licensee regarding discounts on Univis he claimed you were allowing to professional people. We will be frank to say that the information is rather vague, and in writing to you we do not mean to imply that we accept it as accurate. Rather, that we are bringing it to your attention so that if there have been any deviations through a misunderstanding in your organization you can set them straight and avoid any repetitions.

Our policy permits courtesy discounts on lenses for their own use to personnel of licensee's organization; to professional men who refract without dispensing; or who treat eyes but refer refractions. Otherwise, discounts are out of order.

As mentioned, we do not know what foundation there may be for the complaint, but if it is based on fact we will be pleased to have your assurance of correcting the situation.

With best wishes, we are

Sincerely yours,

By THE UNIVIS CORPORATION.

LVB:Mc.

Copy: Marks.

731

HOMER R. GETTLE,  
Fort Wayne, Indiana, March 1st, 1939.

The UNIVIS CORPORATION,  
Dayton, Ohio.

GENTLEMEN: In reply to your letter of the 24th. will say that our policy is and always has been to allow a small percent discount to ministers of the gospel, physicians, and missionaries.

If you object to this we will fit this class of people with some other make of bifocals.

Yours Truly,

HOMER R. GETTLE, O. D.,  
M. M. G.

732

MARCH 7, 1939.

HOMER R. GETTLE, O. D.,  
Fort Wayne, Ind.

DEAR DOCTOR: Referring to your letter of the 1st inst., we request that you do not give discounts on Univis to any persons excepting those to whom it is permissible, as mentioned in our

letter of Feb. 24th. In other cases, when you feel that allowance of special discount is necessary, we will agree with your suggestion to use some other bifocal.

You will appreciate, of course, that this request is not through any desire to be arbitrary, but in the interest of maintenance of the Univis policy for mutual interests of yourself and other licensees.

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_.

LVB: Mc.

Copy: Marks.

733

FEBRUARY 21, 1939.

C. F. BRINDEL, O. D.,

27 West 10th St., Anderson, Indiana.

DEAR DR. BRINDEL: We have your letter expressing your interest in obtaining a Univis license, and will be pleased to consider the matter with you.

As you are doubtless aware, we have a very strong protective policy, by which distribution is confined to ethical channels. A qualification for Univis licensing is the maintaining of high standards and proper competitive methods (in contract to cut-price competition); contract obligation to observe the established minimum prices; and assurance of use of Univis lenses actively to make the connection mutually profitable.

In order to expedite consideration, we will ask you for information. Please tell us how long you have been in practice in Anderson, whether you advertise prices, or claim that your prices are lower than others. Is your office exclusively optical; or, if in connection with some other establishment, please name it and give circumstances.

How many pairs of Univis lenses do you estimate you will be able to use per month on the average, if licensed? This is on the point of mutual interest.

Our wholesale distribution is through licensed independent jobbers. What jobber does your prescription work mainly—and mention also other jobbers from whom you make purchases, listing them in the order of your preference.

On hearing from you regarding the above, we will be pleased to give our further consideration.

With appreciation of your interest, we are

Sincerely yours,

THE UNIVIS LENS COMPANY.

MCD: LB.

Copy: Marks.

734

OCTOBER 27, 1934.

Dr. A. B. NORTHERN,  
713½ Pine St., Rolla, Missouri.

DEAR DOCTOR: Your letter of October 23rd to Barnett & Ramey Optical Co. has been forwarded to us. It is beyond authority to assign exclusive rights for any territory, as the directors of the Univis licensing system, in arranging the set-up, specifically stipulated that franchises shall be nonexclusive. Therefore, the provision was incorporated in all contracts.

The purpose of Univis licensing is briefly described in the enclosed pamphlet. What we guarantee is that Univis sales shall be restricted to licensees who are ethical and sold by them at not less than the established minimum price. The Univis licensed set-up is the most carefully selected and most strictly enforced, and it gives the licensees real protection from unfair competition.

We venture to suggest that you consider the question: "What bifocal will give my patients the best results and myself the best protection?"

Sincerely yours,

THE UNIVIS CORPORATION.

By \_\_\_\_\_

LVB:MC.

Encl.

735

Date April 28, 19—.

THE UNIVIS LENS COMPANY,  
Dayton, Ohio.

It is understood that if I am granted a Univis License I will make proper use of the privilege extended to me by regularly prescribing and serving my patients with Univis bifocals and not use same merely for duplicating purposes. I will use on an average a minimum of 50 pairs each month.

Dr. RUSSELL H. WEHARA & STAFF.

Signed Dr. Russell H. WeHara.

My average monthly bifocal Rx's number 75 up pairs.

736

Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To LvB.

From MTS.

Place, NYC. Date 7-7-39.

DEAR BROWNIE: May we pause a moment to cast admiring eyes on your letter re: Harry Bray Optical Co., Cleveland, Ohio???? I do believe you are completely correct in holding this one up indefinitely.

The optical situation in the city of Cleveland has certainly undergone more changes in the past ten years than any town I know about. You are probably familiar with the number of dispensers that have opened in that time. Almost a phenomenal change has come over the lay-out. Whereas, in 1929 there were a few large dispensers, at the start of 1939 you will find at least a dozen. And all of them have come out of the other larger places and opened a one-man set-up. In so many of these similar instances the only way a man can get started is to offer "seduced rates"—and they do this under cover efficiently. I find that the ones who formerly worked for a retailer are not so offensive as those who were with a jobber. The former usually have M. D. friendships to work on. The latter have price ideas and often lower quality.

In that our picture in Cleveland is quite a thorn in White-Haines side, and considering the fact that I'm sadistic, I do favor keeping the old guard contented and trying at all times to bend over backwards to prevent even ONE undesirable or doubtful account to enter our list.

Another point I'd like to stress on license policy is this: A good number of M. D.'s are starting to do their own fitting in different parts of the country. We must be very careful on this.

737 I find that nearly all of them are not entirely familiar with the policy even tho they sign the contract and read it over carefully. Most oculists will not charge a refracting fee when they fit glasses. In place of the usual \$5 or \$10 office visit, they merely say your glasses will be \$28 complete. If you break that down you will find UNIVIS price too low. And on duplicate lens jobs they guess at price because they are too busy to be bothered to look it up.

I believe your records will disclose that it is rare to find a dispensing oculist that has "earned his salt" on our list. And also, methinx where a retail dispenser is located in the same town and is a UNIVIS licensee, we should be most careful about entering into contract with any M. D.

Best regards to all the Univisers.

And to the LVB's.

Sincerely,

MILTON.

738 M. T. Silverman.  
L. V. Browne.

7/12/39.

No doubt about there being an increase of M. D. dispensing. Of course, it is mostly in the smaller towns. I think the M. D.'s in cities who dispense don't as a rule sell many Univis. There are exceptions, like your friend Culler, for instance. Another kind of city M. D. licensing is the oculist who has his dispensing done



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by a wholesaler—having no Univis license and must do his own in prescribing Univis. Blackburn here is an example of this.

There are problems about this. I don't see how we can require an oculist to charge a fee in addition to the price of lenses and merchandise, when that is not required of optometric licensees—as a rule. We should go slow in licensing M. D.'s in cities, no doubt. Some of them have been so licensed to take care of special circumstances; usually simply prescribing and sending patients out.

Regards,  
LVB:Mc.

739

DR. L. O. EMBREY, OPTOMETRIST,  
*Laurel, Mississippi, February 6, 1940.*

UNIVIS LENS COMPANY,  
*Dayton, Ohio.*

GENTLEMEN: You will find in the next few days that Dr. W. S. Harper, M. D., of this city, will ask for a Univis license. This doctor has approached Central Optical Company, Mobile, for a license only to duplicate my lenses. Central has turned him down, and I am hoping that you will see fit to do the same.

Dr. Harper has no certain price to charge for lenses, and he may charge \$6.00 or \$25, whatever he thinks he can get. It has been his policy in the past to cut prices on all kinds of merchandise for the last fifteen years.

American Optical Company tried to straighten him out regarding prices at several different times, but so far have not been able to do so.

740 As I am the only one in Laurel who is pushing Univis lenses, and from my record you will see that I use a lot of them, I will appreciate your further cooperation in this matter.

Please give my regards to Virgil Hancock.

Thanking you, I am

Yours very truly,

(Signed) DR. L. O. EMBREY,  
Dr. L. O. Embrey.

LOE:BJ.

741

FEBRUARY 9, 1940.

L. O. EMBREY, O. D.,  
314 Magnolia St.,  
*Laurel, Mississippi.*

DEAR DOCTOR: We have your letter regarding a certain oculist in your city operating on a cut-price policy.

It would not be in accord with our policy to issue a license in such circumstances.

You can depend on protection by Univis.

We appreciate your interest and your bringing the situation to our attention.

It will be a pleasure to convey your regard to Virgil Hancock, who is at present in the East.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB: Mc.

Copy: VHH.

742

MARCH 1, 1940.

CLINTON OPTICAL CO.,

36 Clinton Ave., N., Rochester, New York.

Attention: Mr. Philip Zenkel.

GENTLEMEN: Referring to your wire about Dr. Rowe, we wrote you yesterday in explanation of our telegram regarding ineligibility.

Confidentially, we were informed that she did not conform to desirable competitive methods and pricing. The check-up followed an inquiry from her and it developed that she had been trying to get a Univis duplication from one of our Chicago distributors, as well as others. She stated her Rx work was done by Midwest Optical Company, Cleveland, and A. O. Company, Youngstown, Ohio. The circumstances indicate it would not be helpful to interests of our licensed set-up to issue the license.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB: Mc.

Copy: MTS.

743

MAY 31, 1940.

MCLEOD OPTICAL COMPANY, INC.,

357 Westminister St., Providence, R. I.

GENTLEMEN: We are referring to Mr. Tully the franchise application you sent for Louis Mongillo, dispenser, 193 Church St., New Haven, Connecticut.

A report several years ago indicated it would not be desirable to issue license to him—cut price sales being mentioned. Unless the situation has changed decisively it is likely we will have to tell him the application cannot be approved at this time.

We are holding without action the application for J. F. Quinn, M. D., 144 Golden Hill St., Bridgeport, Conn. The license set-up there is very good, and we doubt that it should be disturbed. The

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situation will be checked and we will advise you if circumstances indicate otherwise.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB: Mc.

Mr. TULLY: Inf. blank says Mongillo's also sell cameras. A memo from you in Feb. 1934 says Mr. Mossberg of Colonial Opt. wanted you to call on Mongillo, but that you didn't consider him desirable . . . "is a 'good fellow' but cur-price sales are very disturbing to Harvey & Lewis and Fritz & Hawley."

M. T. S. says licensing of oculist to dispense would be very annoying to our dispensers in Bridgeport.

Please advise re Mongillo.

L. V. B.

744

UNITED STATES OPTICAL, INC.,

325 REPUBLIC BUILDING,

Cleveland, January 2, 1940.

UNIVIS LENS CO.,

Dayton, Ohio.

GENTLEMEN: We are enclosing application for Dr. Samuel R. Levy, who is now with the May Company Department Store in this City, but on February 10th he is taking over the Optical Department in the Bailey Company, which was formerly operated by Dr. R. H. Seifert, who recently died.

The Bailey Company will not allow any price advertising or cut-rate business, so it will be necessary for Dr. Levy to conduct his business on an ethical basis or his lease will be cancelled. He is very enthusiastic about Univis lenses and we believe he will develop into a good account, if his license is approved.

If there is any further information you desire, kindly write us and we will be pleased to give it to you.

Very truly yours,

UNITED STATES OPTICAL, INC.,

F. D. ROBINSON,

F. D. Robinson.

FDR: VP.

745

FEBRUARY 2, 1940.

SAMUEL R. LEVY, O. D.,

The May Company, Cleveland, Ohio.

DEAR DOCTOR: We understand that you are to take over the Optical Department at the Bailey Company, where the late Dr. R. H. Seifert had Univis franchise. We write with a view to

consideration of the possibility of a franchise for you. The license to Dr. R. H. Seifert was by contract with him individually, and is not transferable nor assignable. Copy of our franchise form is enclosed for your information.

As you doubtless know, we have a protective licensing policy by which Univis lenses are restricted to selected licensees. Dr. Seifert fulfilled requirements in his type of practice and Univis franchise was a constructive asset for him.

We do not know what your program may be, but if you wish to be considered for Univis franchise, we suggest that you give us information about your policy with respect to maintenance of ethical methods of practice and observance of standard prices.

With regard to advertising: is it your intention to advertise prices of optical items; down payments, or to indicate that your prices are lower than are charged by others? This question is with reference to optical products in general, as Dr. Seifert did not run advertising on Univis, and that policy would continue if a new license is issued.

You will appreciate, doctor, that the purpose in writing you at this time is to let you know the situation regarding Univis, and to determine the feasibility of license contract.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:Mc.

Copy: F. W. King.

MTS.

U. S. Opt. 2/5/40.

746 DR. SAMUEL R. LEVY & ASSOCIATES, OPTOMETRISTS,  
OFFICES AT THE MAY CO.,  
Cleveland, Ohio, Feb. 8, 1940.

Mr. L. V. BROWN,

*Univis Corp., Dayton, Ohio.*

DEAR SIR: In your letter of February second you have asked me certain questions in regard to my policy of operating the late Dr. Seifert's practice. In this regard, I wish to say that it is my intention to follow Dr. Seifert's procedure on practically all points. I do not intend to even mention price in any of my advertising and I feel it is a matter of good business to maintain a standard price on all optical items, including Univis. It is my purpose to use what is known as institutional advertising, mentioning only service and necessity of proper eye care.

I might add that I have already submitted a franchise form thru Mr. Robinson of U. S. Optical Co., this city.

Yours sincerely,

SAMUEL R. LEVY.

747

MAY 28, 1940.

D. FRANKLIN SCHIPPER, O. D.,  
108 W. Jefferson, Morris, Ills.

DEAR DOCTOR: Mr. J. R. Silverman has referred to us your letter to him of May 17th, as matters pertaining to Univis licenses are handled by this Corporation.

The reference to "third" clause in the letter sent to you was simply to indicate that the termination of franchise was made in accordance with the provision making the license revocable at option of this Corporation—an option which you of course also possessed. We might say that you practically exercised that option yourself by virtual inactivity with Univis lenses over a considerable period, whereas active use of the lenses was promised in applying for license. In the circumstances, benefit from the contract was lacking and it was appropriate to terminate same.

We are sorry the situation has not warranted continuation.

Yours truly,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB-S.

Memo to Roy Marks: He wrote pretty long letter to JRS asking why he was cancelled, saying he had committed no violation of contract that he knew of, etc. You might give a little more dope on his "bad actor" phase (for preparedness in case he or some wholesaler writes in again.)

748

MORRIS OPTICAL CO.,  
108 W. JEFFERSON,  
Morris, Ill., May 17th, 1940.

Mr. JACK SILVERMAN,  
Univis Corp., Dayton, Ohio.

DEAR JACK: As I do not know Mr. L. V. Browne of your company I am writing at this time for information from you.

We received a letter which I have pinned to this letter in regard to the cancellation of our Univis agreement. In referring to clause marked third and after reading same I can not understand where we have violated this or any other clause in the Univis contract. Neither can I understand his reference to the licensing arrangement of October 1939 being unsatisfactory.

In reference to clause No. 3 I have your charts with advise for fitting Univis lenses. I have read same and use to the best of my ability the advise given therein. Of course it goes without saying



that all corrections can not be fitted according to charts and cut and dried rules of procedure, because of the necessity of sometimes giving in to patients with a predetermined idea of their own. In which cases we sometimes have to compromise a little on our ideas and see the other fellow's point of view.

I would like a satisfactory explanation in writing as to why your company sees fit to want to terminate my contract, as if I wished to terminate the contract I certainly would favor you with the facts of the case and my complaints would be truly set forth.

Thanking you for your kindness shown in the past, I beg to remain,

Sincerely,

D. FRANKLIN SCHIPPER.

As per report from R Marks 5/4/40: Please remove from list on report that he is a bad bet—also does some wholesaling and on top of that has not used Univis as promised when licensed.

749

APRIL 16, 1940.

Confidential.—

MILWAUKEE OPTICAL MFG. CO.,

*Milwaukee, Wis.*

GENTLEMEN: We are sorry to say that the appointment of A. B. Schultz, O. D., Wausau, Wisconsin, to the Univis list was criticised by licensees in the territory—and it was indicated that he would be likely to use Univis in instances of duplication mainly, or solely.

Now, sales reports show no Univis purchases by him since the license was issued. Therefore, we are cancelling the franchise by sending notification to him today—copy of which is enclosed for your information.

We regret the circumstances.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

IVD: Mc.

Copy: Marks.

R. MARKS: E. F. B. has now checked sales reports and no purchase shown for Schultz. Cancelling the license. Enclosing three copies of cancellation notice, and also the file of correspondence as you requested.

L. V. B.

750

JULY 12, 1940.

FRED W. NICHOLSON, INC.,

*Columbia, Ohio.*

GENTLEMEN: Referring to your letter of the 11th, our representative made a call on C. J. Forney, O. D., at Galion, Ohio, and

expressed the opinion that while he has improved professionally, the practice is small, and he did not believe Dr. Fortney would prove of value as a licensee. However, in view of your statement of what he is doing, and your confidence that you will make him a worth while user of Univis lenses, we are approving his application.

We are also approving the application of Otis C. Force, O. D.,  
[Copy illegible]

Please add the above names to your list of Univis licensees.  
[Copy illegible]

will be necessary to withhold action on this. Several years ago when in that territory our representative reported that Dr. Jose could not be eligible for Univis license as he cut prices generally. Of course, this is simply for your confidential information. However, a further check-up will be made when our representative visits the territory again. In the meantime, we are sending an acknowledgment of the receipt of the application to Dr. Jose and advising him that a representative will call on his next visit to the territory.

Regarding application for S. A. Wagner, O. D., Massillon, Ohio, your information is incomplete—"how long has he been in practice and does he advertise?" Will you kindly write us regarding him in further detail and as to his interest in using Univis lenses actively?

Very truly yours,

L. V. Browne.  
k.

THE UNIVIS CORPORATION.

751

[COPY]

#### INFORMATION REQUIRED REGARDING UNIVIS APPLICANTS

\* \* \*

This information is necessary regarding each applicant for representative franchise. It is to be sent to The Univis Corporation, Dayton, Ohio, with the applicant's signed contract.

Name of Applicant, Charles Littwin.

Address, 950 Queene Anne Rd.

City and State, Teaneck, N. J.

Optometrist, optician, or oculist? Oculist.

Q. Is his establishment exclusively optical—or in connection with a jewelry, drug, or department store? In connection with practice of ophthalmology.

Q. How long in practice in this location? 17 yrs.

Q. Does he maintain high standards of practice? Yes.

Q. Does he advertise? No.

If so, does he advertise prices? -----  
 Or that his prices are lower than average competition? -----  
 Questionable—claims he can save patients money on glasses.  
 Eligible? No.

752

SEPT. 16, 1940.

E. P. BEACH, O. D.,

*Grand Rapids, Mich.*

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in August 1931 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return any Univis material you have in your possession.

We regret the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_, *Vice President.*

LVB:Mc.

Reg. No. —.

JOHNSTON OPTICAL CO.,

*Grand Rapids, Mich.*

In accordance with the above, please remove this name from your Univis licensee list.

THE UNIVIS CORPORATION.

Copy: Detroit office.

Maloney.

753

GRAND RAPIDS, MICH., Sept. 20, 1940.

Mr. ROY MARK,

*Dayton, Ohio.*

DEAR MR. MARK: I just received the special delivery letter from The Univis Corporation stating that my license to sell Univis lenses is being revoked.

I still fail to see where it is unsatisfactory to the Univis Corporation.

I have sold a lot of Univis lenses in the past; have sold six pairs in the past six weeks as you will see by referring to the record. That seems to me to be quite a few.

Some of my patients have worn Univis lenses for several  
 754 years, so how am I to help them in case of breakage or if they need new Univis lenses? Seems to me unfair.

You understand well my situation and that I am selling as many as possible with my present situation as it is.

If you can assist me in any way would be glad to hear from you.

Yours truly,

E. P. BEACH, *Optometrist,*  
156 Monroe Ave., Grand Rapids, Mich.

755 Company correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Univis.

From R. Marks.

Place Chgo. Date 10/10/40.

Re: E. P. Beach, Grand Rapids.

Please file the attached letter. I have answered the lad vaguely and have told him that when next Maloney is there, he will drop in and discuss it with him.

This lad is in a cheap credit jewelry store and has never done an especially good job—a fact that developed after we dug into JOCo. records. They OK the removal—and he doesn't do us any good in Gr. Rapids.

Regards,

ROY.

756 Company correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To L. V. B.

From G. P. T.

Place ----- Date 12/2/40.

Re: E. W. Cowie, Troy, N.Y.

He is one of the most notorious price-cutters in N. Y. State & definitely not desirable.

G. P. T.

757

DECEMBER 5, 1940.

WINCHESTER OPTICAL CO.,

402 Franklin St., Horseheads, N. Y.

GENTLEMEN: With further reference to franchise application of E. W. Cowie, O. D., Troy, New York, there will be no immediate action. It will remain pending for possible consideration

at a later date. In the meantime, of course, he is not eligible for Univis service.

Yours very truly,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB: Mc.

Copy: Tully.

758

Exhibit 45

Dealer's Name: C. W. Higgins.

Address: 4811 Whittier Blvd.

City and State: Belvedere Gardens, Calif.

Suburb of L. A.

Date of Call, Nov. 1935.

Salesman's Name, R. E. M.

Optician or Optometrist? \_\_\_\_\_

Licensee or Prospective? Ex-Univis Licensee.

Number of floormen? \_\_\_\_\_

Full names of principals in firm, indicate who is dominating active manager.

I picked up the "Certificate of Award."

Revoke.

Attitude Toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract
-----------	-----------	-----------	----------	----------

Character of store or practice? High-grade or popular prices?

Estimated volume of bifocals annually? (1).

Wholesaler from whom he purchases Univis \_\_\_\_\_

Remarks; He is rewrite man on a L. A. Newspaper and also a lawyer. He took up Optometry when he was 57 years of age. He recently gave up the newspaper job trying to make good as an Optometrist. He recently started to advertise Budget system in order to keep the wolf in the Zoo. He is selling Kryptoks or should I say using them and only the commercial grade. This whole community is on the poorer side of Los Angeles and they appear to be very price conscious.

759

DECEMBER 10, 1935.

DR. C. W. HIGGINS,

4811 Whittier Blvd., Belvedere Gardens, Calif.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in June 1932 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.



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Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

We regret that the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB:MC.  
Reg. No. —

760

DECEMBER 10, 1935.

ASSOCIATED OPTICAL CO.,  
Los Angeles, Calif.

GENTLEMEN: This is to advise that the contract of Mr. G. W. Higgins, Los Angeles (Belvedere Gardens) has been revoked this date. Please see that his name is removed from your list of Univis licensees and that he no longer receives Univis service.

Yours very truly,

THE UNIVIS CORPORATION.

P. S. A copy of our letter to Dr. Higgins is enclosed for your information.

I. McD.

Copy: Merville.

761

Dealer's Name: Milton Glinberg.

Address: 16 Pine Street.

City and State: Long Beach, Calif.

Date of Call: 6/15/32.

Salesman's Name: R. E. M. (R: E. Merville).

Optician or Optometrist? \_\_\_\_\_

Licensee or Prospective? \_\_\_\_\_

Number of floormen? \_\_\_\_\_

Full names of principals in firm; indicate who is dominating active manager:  
\_\_\_\_\_  
\_\_\_\_\_

Contract pending.

Attitude Toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract

Character of store or practice? High-grade or popular prices?  
\_\_\_\_\_

Estimated volume of bifocals annually?-----

Wholesaler from whom he purchases Univis-----

Remarks: We have too much good business in L. B. to take a chance with this chap. He has been a price cutter and conditions in L. B. are not very healthy for any firm who sells price cutters and we are making as much capital of the condition as possible.

Roy Mears the L. B. Mgr. of Associated is a little weak kneed in many matters and signing Univis licensees is one of them. I don't want to discourage him; he is very temperamental.

If additional remarks are put on other side, write the word "over" here-----

762

SPOKANE, WASH., Sept. 16, 1933.

Dr. E. I. Wood,

1024 Eye Street, Modesto, Calif.

DEAR DOCTOR WOOD: Your letter of July 10th has been a long time in reaching me, due to the fact that I had to change my routing and mail was delayed.

Modesto has been somewhat of an enigma to the writer so far as Univis is concerned. All of the Valley towns have done a fairly good Univis business, except Merced perhaps. I am writing you very frankly, Doctor, because of past mistakes being made in Modesto we have not had the Univis business which we could have had otherwise.

No Univis licenses are granted just so that the licensee can have the privilege of duplicating broken Univis lenses when they are brought in, nor are inactive licensees kept on the list. Of course, we have been very considerate during the past two or three years due to general business conditions, but the time has come now for every one to step into line and say "I will or I won't," and that makes it much easier to select those who believe in the future of a protected priced article.

Our situation is no different than any other agency agreement. What makes it seem different is that there is no other idea like this in the whole Optical industry. We have pursued the same policy consistently now for seven years and our business has grown tremendously and our retailers who use Univis have made more profits than those who have used cheaper and competitive priced bifocals. Speaking of Agencies, we expect a certain definite amount of Univis business from our licensees, from  $33\frac{1}{3}$  to 50% of your bifocal sales should be Univis if you have a license. Many of our licensees tell us today that their sales are 85% Univis, this is possible today where perhaps it was not possible a year ago.

In other lines of business, the Stetson hat agency sells Stetson hats, the Ford agency sells Fords and if they wish to push another line they give up the old line. A Univis license has meant many

hundreds of dollars to the licensees in Sacramento, San Francisco, and Los Angeles, you ask anyone of our larger licensees if they would give up Univis and listen to what they have to say. They are businessmen and they saw the future profits to be made in an article that the price cutter could not sell and the advantage of more or less exclusive sales rights.

763 We don't ordinarily grant licenses without calling on those interested, because it is very difficult to picture just what Univis can do for you and your business in a letter. Please don't form an opinion that we are independent or high hatish because such is not the case, but you can appreciate that no other agencies are placed by correspondence as a rule and a Univis License is not just *another license* like many which have made their appearance in the Optical business during the past five years and which can be obtained by buying a certain quantity of merchandise. We have no merchandise to sell, we do have a line of samples and demonstrators which are given away to the right parties.

If you will be kind enough to give us some information about conditions in Modesto and about your particular business.

Are you advertising any Optical Merchandise or Service at the present time?

Have you during the past year so advertised?

Are you or have you advertised prices in connection with your Optical department recently?

If you have advertised, if you would enclose copies of your advertisements, they would quickly answer the above questions.

How many bifocals of all kinds do you sell per month?

What price have you recently sold Kryptoks and Ultex for?

I might mention that I have an information blank which I have to fill out for the Univis Corporation in Dayton, and the answers to above questions are necessary in part for this blank.

I am enclosing a sample copy of the Contract, also photo illustrations of our bifocals with the exception of the new "H" which is making quite a hit because of its tremendously large field with no blind areas anywhere. I could write pages and pages on the subject of the benefits of Univis to your patients. Five years from now 90% of the bifocals sold by larger and better Optical establishments will be of the Univis type. Other bifocals will only be sold by the Price cutters.

Please address your communication to me at the address given below.

Very sincerely,

R. E. MERVILLE.

% RICHS OPTICAL CO.,

Liggett Bldg. Seattle, Wash.

764 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Attention of L. V. Browne.

From R. E. M.

Place Seattle, Wash. Date 10/20/33.

Please remove from the list the following names:

① Benton Bros. (B. Commerce), Seattle.

① J. C. McBride, Eastern Bldg., Seattle.

Lucy Des Rochers, Jusha Green Bldg., Seattle.

Cancellations. 10/25/33.

① I have their Certificates of Awards.

Enclosed Reports on the above will give you a more complete story of why these changes are being suggested.

Seattle has not shown the interest in Univis that it should have shown. There is a very definite reason for this.

Two years ago when I was here I suggested to Mr. Taylor of the Columbian Optical Co. that the new licensees would be looking up to him as a leader in Univis. I didn't know the local situation quite as well then as I do now. Every account in Seattle has it in for Taylor and from my investigation they have a basis for their complaints. I have talked with three different personal friends who are in business here in Seattle and each one told me that they went to Columbian for their glasses because Columbian gave their firm and the employees 25% discount. These firms are not large.

Now some people could get away with this and a lot more and their competitors would like it but it seems to the Optical fraternity in Seattle that Taylor is a man who can make the other fellow mad by just saying "Good Morning" to him, you know the type. I have no personal complaint for I don't call on him often and whenever I do I beat him to the punch and get along fine with him. He is making it tough for Univis.

765

OCT. 25, 1933.

Cancel.

Dr. J. G. McBride,  
Seattle, Wash.

DEAR DOCTOR: This is to notify you of the termination of the franchise issued to you, licensing you for service with Univis patent lenses—in accordance with the clause marked "THIRD" in the contract.

Regretting that the arrangement did not serve the intended purpose more satisfactorily, we are

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

MCD/EM.

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766 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Attention of L. V. Browne.

From R. E. M.

Place L. A. Date 7/26/34.

Spratt Optical Co. inform me that they made a mistake in recommending E. V. Bobb, M. D. of Alhambra for the Univis list, that he is a price cutter and an all around bad actor.

In order to find out how Superior would stand on this subject I asked them if they would recommend E. V. Bobb as a good licensee and Mr. Ryan informed me that he would not.

Under the circumstances I am sure you will wish to cancel the license. I will make good use of the information when I call on Geo. H. Baynton, who is our best bet in Alhambra.

M.

767

AUGUST 9, 1934.

Dr. E. V. BOBB,

300 Medical Bldg., Alhambra, Calif.

DEAR DOCTOR: In accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return to us the Univis samples, window display cards, etc., supplied to you.

We regret the arrangement did not serve the intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_, Vice President.

LVB:MC.

Copy to Spratt Opt. Co.

768

Dealer's Name, Forsyth & Son.

Address, 128 W. Broadway.

City and State, Long Beach, Calif.

Date of Call, Oct. 1934.

Salesman's Name, R. E. M. (R. E. Merville).

Rec'd Oct. 20, 1934.

Optician or Optometrist? -----

Licensee or Prospective? -----

Number of floormen? -----

Full names of principals in firm; indicate who is dominating active manager:

Here is a problem. John the father is getting along in years, the son is an only boy and doesn't dare say a word to father but

9



says plenty to those who cannot talk back to him but he simply imitates his father and is plenty tough. I have known John for years and I think that I won him.

### Attitude Toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract
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Character of store or practice? High-grade or popular prices?--

Estimated volume of bifocals annually? 200 (pairs) or more.

Wholesaler from whom he purchases Univis, Associated.

Remarks: The father talks all of the time and is driving business away but I wasn't business. After he told me how hard up all of his patients were how he knew all of their troubles, I suggested that he would be better off to sell out to John Doe and then let Mr. Doe grow whiskers and start in all over again. He agreed but Big Hearted John didn't have the heart to charge his patients for Univis. After showing him how he made \$32.50 on each ten pairs of Univis over kryptoks, I suggested that he tell the patients "I make the same on these two bifocals, I don't care from my standpoint which one you take, I make no more 769 on the higher price one than I do on the other but since this one would be much better for your eyes I would suggest that you take this one but I am not recommending it because I make more money, in fact in the long run I make less but it's better for you."

He slapped me on the back and agreed that that was a clever way out and will start tomorrow morning on the idea.

He has been a politician ever since I have known him and now isn't that just like a politician.

R. E. MERVILLE

(Signed) R. E. M.

R. E. M.

k.

770 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To Univis Corporation.

From R. E. M.

Place L. A. Date 7/30/34.

I am suggesting that we cancel the license of J. L. Nyrin, 434 So. Hill St., Los Angeles, Calif., as suggested by E. W. Reynolds Co. He has developed into an impossible account so they say and

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he is using only the very cheapest merchandise and selling at any prices. We would not have O. Kd. him originally except they promised that they could make something out of him.

M.

771. Cancel.

AUGUST 9, 1934.

DR. J. L. NYRIN,  
Los Angeles, Calif.

DEAR DOCTOR: In accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return to us the metal Certificate of Award, Univis samples, window display cards and other Univis material supplied to you.

We regret the arrangement did not serve the intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB:MC.

Copy to Reynolds.

772 Dealer's Name Ray M. Moose, M. D.

Address 575 W. 5th Street.

City and State San Bernardino, Calif.

Revoke.

Date of Call Aug. 1935.

Salesman's Name R. E. M.

Optician or Optometrist? Oculist.

Licensee or Prospective? Ex-Licensee.

Number of floormen? \_\_\_\_\_

Full names of principals in firm: indicate who is dominating active manager.

Please cancel this license, its the only thing left for us to do. Ryan of Superior made this statement when I asked for his help. "Your a dandy if you sell Ray Moose, he is too price conscious, he likes to buy cheap."

Attitude Toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract
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Character of store or practice? High-grade or popular prices?

Estimated volume of bifocals annually? -----

Wholesaler from whom he purchases Univis Superior.

Remarks: He flatly refused to see me. I had never met the man. I had sold the nurse, who does most of the refracting, on a previous trip and she did her best to get the doctor to discuss Univis with me but he would not see me. Besides being a price hound I believe he is also death on Optometrists. He and Rife had a split some years back and Rife sells plenty of Univis in San Bernardino. You can write in your book also, this is the effect of giving a man a license before he is sold or even told about Univis. Just "Sign here Doctor.

R. E. M.

773

SEPTEMBER 4, 1935.

Dr. RAY M. MOOSE,

575 West 5th St., San Bernardino, Calif.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in March 1933 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

We regret that the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_, Vice President.

LVB:MC.

Reg. No. —.

774 Dealer's Name T. R. Jones. Address 1506 Mission Street.  
City and State So. Pasadena, Calif.

Date of Call Sept. 1935.

Saleman's Name R. E. M.

Optician or Optometrist? -----

Licensee or Prospective? EX-.

Number of floormen? -----

Full names of principals in firm; indicate who is dominating active manager:  
-----  
-----

Revoke.

## Attitude toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract
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Character of store or practice? High-grade or popular prices?..  
 Estimated volume of bifocals annually?-----

Wholesaler from whom he purchases Univis. No purchases.

Remarks: Another case of a wholesaler signing up an American account and hoping to get some business thereby. He has one foot in the grave, you should see the place, a watch makers bench and practically no Optical equipment. Doesn't know the business. I resolve every time I see a case like this that No licenses should be granted upon the "say" of a wholesaler.

I did not pick up the certificate of award as I wanted to investigate. I find that the Mr. Jones is a price cutter otherwise he would have no business at all.

775

SEPT. 16, 1935.

DR. T. R. JONES,

1506 Mission St., So. Pasadena, Calif.

DEAR DOCTOR: In view of the fact that the licensing arrangement entered into with you in June 1933 has failed to develop satisfactorily, it becomes advisable to discontinue the arrangement.

Therefore, in accordance with the clause marked "Third" in the contract licensing you for service with Univis patent lenses, we hereby notify you of the termination of the franchise issued to you.

Kindly return to us the Univis metal certificate and other Univis material supplied to you.

We regret that the arrangement did not serve its intended purpose more satisfactorily.

Sincerely yours,

THE UNIVIS CORPORATION,  
 By \_\_\_\_\_, Vice President.

LVB:MC.

Reg. No. —.

Copy: Reynolds.

776

SEPT. 16, 1935.

E. W. REYNOLDS Co.,  
Los Angeles, Calif.

DEAR DOCTOR: Please remove from your list of Univis licensees the name of Dr. T. R. Jones, South Pasadena. A copy of the letter terminating the contract is enclosed.

Yours very truly,

THE UNIVIS CORPORATION,

MCD: M.

777

T. R. JONES,  
1129 WINDSOR PLACE,  
South Pasadena, California,  
Sept. 24, 1935.

File:  
THE UNIVIS CORPORATION,  
Dayton, Ohio.

GENTLEMEN: I have your courteous letter of Sept. 16, and agreeable to your request, am returning metal certificate under separate cover.

Sincerely yours,

T. R. JONES,  
T. R. Jones

TRJ: CW.

778 Dealer's Name: Wm. Riley Franklin, Colorado Springs, Colo.

Date of Call: Jan. 1936. No. call.

Salesman's Name: R. E. M.

Optician or Optometrist?

Licensee or Prospective?

Number of floormen?

Full names of principals in firm; indicate who is dominating active manager:

Revoke.

Attitude Toward Univis

Style "B"	Style "D"	Style "R"	Trifocal	Cataract

Character of store or practice? High-grade or popular prices?

Estimated volume of bifocals annually?

Wholesaler from whom he purchases Univis: Buys no Univis.



Remarks: Everyone asked, "How did that man every get on your list?" Even Riggs admitted that he was a price cutter and used nothing but the very cheapest of everything.

I would suggest that the license be cancelled. Weiss claim that they pull considerable business from C. S.

If additional remarks are put on other side, write the word "over" here-----

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SAN FRANCISCO, CALIF., Nov. 12th, 1936.

W. H. CROSWHITE,

3 So. School Street, Lodi, Calif.

DEAR BILL: If I do not convey this information to you I suppose it would be some time arriving indirectly. I know you did not request this action and we did not discuss it and if we had, you would have told me that it was not your wish.

The Univis situation in Lodi and community is now entirely in your hands or to put it another way you are the sole Univis Licensee in Lodi. The Univis Corporation deemed it wise to make certain changes and last week those in the chain of events were notified.

Our records show that in the communities in which there is only one licensee that our interests are usually served with more efficiency or we might better say more enthusiasm, surely it should mean more to the Optometrist whose interest, after the welfare of his patient, are akin to that of the Chrysler dealer who must believe I am sure that his cars are far superior to those of General Motors. Univis bifocal line should mean more to you and your patients now. You are the only one who can serve and service them.

With kind regards, I remain,

Sincerely yours,

R. E. MERVILLE.

780

R. E. Merville.

I. McDowell.

1-8-37.

Re Alvin J. Vieira

In the sentence you refer to there was an omission of several words in the transcribing. It should have read: "It would let him, however, dispense Univis directly to the patients of unlicensed retailers who send patients to him with their prescriptions." However, I think you understood what was meant—that the sale is not to the other retailer, but to the patient at the minimum retail price.

Of course I agree with the desirability of the restriction that you told the wholesalers about, and I hope it works. The point in

mind was that our retail contracts do not prevent a licensee from selling Univis directly at minimum retail price to any patient who comes in with a bona fide prescription for himself from a legally qualified prescriber. It is a question if such a restriction would stand legally—and even if it were set up as a rule of record there are ways of getting around it, if the licensed retailer is so disposed, so we have to keep out the kind of retailers who will deal with chisellers in that manner, and also secure cooperation of the wholesalers to really comply with the spirit of the protective policy. If the wholesaler does not charge and keep the full retail price to the patient he dispenses to on a prescription, of course he is actually violating contract.

I hope that what you have said and done with the wholesalers will be sufficient to correct the situation. If not, we will have to see how far we can go with a binding rule on the subject.

LVB:MC.

781

SAN FRANCISCO, CALIF.

February 15, 1937.

DRS. DAYNES & DAYNES,

*Salt Lake City, Utah.*

GENTLEMEN: *The Western Optical Co.* wrote recently to our home office regarding the fact that you had made application for a Univis License. In view of your interest in this matter we are going to lay our problem directly before you and ask you frankly what you suggest.

You of course know conditions in Salt Lake City better than the writer but I know enough to make me believe that such a condition as you have there is not without some way out. Our sales in Salt Lake City have never been very large, in fact so small that I could not blame any one from thinking that Univis bifocals were not of much importance, but considering the fact that we have only issued licenses to approximately 10% of the Optical profession, which includes Oculists as well as Optometrists we are now doing a remarkable business, of course we have all of the large legitimate Optical establishments on our side because we license no Chain stores, no Drug store Optometrists, rarely Credit Jewelry stores (you should appreciate this). We seek only the better element in each community and where the account is large enough we many times have exclusive agents. There is nothing new about our policy, except the fact that it is new to the Optical business; that is it was new eight years ago. Other manufacturers have printed licenses for this or that, trying to ride or hitch-hike on our policy but they haven't done anything about enforcing the policy mentioned or referred to in their "pieces of paper." I am not stating anything that you do not already know, I am sure.

We need policemen in every community to enforce the law. I haven't visited Salt Lake City often because we haven't had any business to protect. There are only five licensees in Salt Lake City and these men are not selling Univis so just as we wrote Western today, we might as well get a divorce on the basis "Failure to provide." Our people do not believe in cluttering up our list with inactive names. We guarantee to our licensees that the price of Univis bifocals will be maintained according to the licenses, that those who do not have licenses will not be able to supply Univis bifocals and that Univis will only be given to those who met the standards as set by your local men. The first requirement in our "Eligibility standards" reads "That the prospect be of good standing among his fellow members of the Optical profession."

I met you gentlemen at an association meeting last year and I know your store very well, but I do not know just to what extent you are interested in Univis bifocals; an application does not tell us that. I do not know the size of your Optical business or the nature of it so I must ask that you fill out the forms which I am attaching herewith and I would appreciate it very much, 782 that is, if you are sufficiently interested, if you would write me and tell us just what you would suggest as to make Univis bifocals something of decided interest to you and if we follow your advice just to what extent you can use our bifocals and policy to further your best interest. Our people believe that our policy works out to the mutual advantage of both parties only if both parties do their share and surely we have done much to keep conditions clean on the Pacific Coast. I am not referring to Salt Lake City but we will guarantee that only those who are selling Univis in Salt Lake City will have Univis licenses if we are successful in securing the cooperation of one or two who are really interested.

I appreciate that for a city of its size, Salt Lake City is very backward Optically, of course ordinarily I would not dare to make such a remark but it's such a plain fact that there cannot be any contradiction and I appreciate that your association is and has been doing everything possible to apply a remedy. For example in Sacramento, California, a city of approximately 78,000, we have but two licensees. One of these averaged over 125 pairs of Univis a month last year and their January 1937 Rx's amounted to 130½ pairs and these were all ground by a wholesale house; the other licensee does not do quite as well but they run a goodly number. There are many small towns in California whose population does not exceed 5,000 where we have exclusively licensees who will average over 20 pairs of Univis a month.

We have not increased the number of Univis licensees during the past three years and still we have enjoyed a good increase in business, for example 1936 was 77% ahead of 1935, this means that

our present licensees are more sold on Univis products each year, it also means that we have weeded out the inactive ones and only the active men remain on our list.

We have written very plainly and we expect if you are interested that you will do the same. We will be guided by your report and you can speak plainly because I know everyone of importance in Salt Lake and surrounding country and we are going to make some changes this year and those who want to profit by these changes can get on the band wagon now. Our patents have until 1950 to run and that leaves us and you people plenty of time to make full use of both our patents and our policy. Of course Univis has been imitated, other manufacturers saw the advantage of the Univis bifocal and tried to make a similar one but the most important features they have had to omit and they have not been satisfied just to make a bifocal but they have tried in many ways particularly thru propaganda to discourage our licensees, saying in some cases that our patents only had a couple of years more to run, in other words they have tried to sell an imitation by slandering the genuine.

We sincerely trust that we may have a very frank expression from you.

Yours very truly,

R. E. MERVILLE

REM:SO.

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4/7/37.

DR. J. H. BURGESS,

*Robinson Professional Bldg., Moscow, Idaho.*

DEAR DR. BURGESS: Your recent letter of application for a Univis License has been referred to the writer for attention.

There are two reasons why it is hardly possible for us to consider accepting your application at this time. The first and main reason is the fact that we do not sell those "Who advertise in a manner which tends to create the impression that they are cheaper than their competitors." This paragraph is taken from our eligibility standards which we set up some years ago for the guidance of our field representatives. We employ a clipping bureau and have before us some of your advertising and we regret that this type of advertising does not in our opinion tend to build a stable Optical business. We have seen much evidence of that in Southern California, of the firms who were thusly advertising three years ago there is but one in business today and they have changed their ways. Barnum may have been right in his day but not today. Last year we had a 77% increase in business with the same number of licensees; we have not increased the number during the past three years. Our licensees are the better element in



each community and they make very few changes in our list necessary. We do sincerely hope that some day you will qualify for our list and we assure you at that time you will be welcome.

Yours sincerely,

R. E. MERVILLE.

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SAN FRANCISCO, CALIF., April 7th, 1937.

Dr. J. P. GRAY,

*First Nat'l. Bank Bldg., Moscow, Idaho.*

DEAR DR. GRAY: Thanks for your letter of the 1st. We appreciate the form in which you furnished the information regarding Dr. J. H. Burgess. We will enclose a copy of the letter which is being written, of course the name will have to be deleted, for reasons you can well imagine.

We wish very much at times that we were the Billy Sunday of the Optical fraternity so that we might reform some of the wayward boys who do not seem to be able to go straight with their prices and advertising. There are some Cities in which the Optometrists would tell you that we have done a good preventive job but to reform those who are already in the sinner class we do not attempt to reform, we do make it plain however that if they will change their ways and stay changed for a year or more and if their fellow competitors will give them a vote of confidence, then we will consider them. Not so very long ago one of the wholesalers took the writer to task because we would license a certain party and he said he couldn't understand why I should spend a half a day with a man and then not give him a license. The truth of the matter was as the wholesaler found out, it took me a half a day to find out what the future policy of this particular Optometrists was going to be, ten days after my visit he started advertising price and this chap is selling so the wholesaler told me about twenty pairs of the bifocal which you mentioned each month now since he was refused Univis. I do know that Sears, Roebuck & Co. stores in Los Angeles have licenses for Panoptiks and several of the larger Los Angeles advertisers. Since both of the large manufacturers are competing with each other on this bifocal, it's impossible to maintain any control, a list of those selling Panoptiks would prove this.

Knowing you to be a man of great integrity I would appreciate it very much if you would tell me in confidence what you "like" about the Panoptik Bifocal. What have they got in the Panoptiks that Univis haven't covered? I promise not to argue the point but I believe your points might be very helpful to me. We trust the points will be your own opinions and not points made by salesmen which you have taken their word for and not investigated,



because we know about all of the things that they tell the trade but we thought that we would receive from you an honest man's opinion. We are enclosing a self addressed stamped envelope for the purpose.

Regarding your record of sales Doctor, we get this regularly every month because our wholesalers have to report to us promptly each month just where every pair of Univis was used. We furnish on the first of each year records to be filled out at the end of each month and these are received soon after the closing of the month, so I have on file near me your records of sales every since you received your Univis license, of course I will admit that we believe that Univis is an asset to an Optometrists only in the proportion to his sales. There are some who make real asset of the fact that they have an exclusive license, especially is this true where they have price cutting competition. They know that Univis will keep the faith with them and they make it hard for patients to get duplications from the price cutting element and they so impress the patients with the benefits of the flat top bifocals that these patients refer and recommend many others to the Univis licensee. I believe that this is the real reason why our policy has gone over as well as it has, of course plus the fact that Univis line of bifocals do have real Optical assets.

If they hadn't been so good our competition would not have tried to copy them, the other bifocals haven't made much head way except with those retailers whom we have refused to license and naturally one should expect this condition.

We will appreciate your writing us and as we said we will not argue the points, so you may feel just as free as the wind to write us. I believe you will give us some valuable slants because we haven't had any real consciencious men express themselves thusly before.

With kind regards, we remain,

Yours sincerely,

R. E. MERVILLE.

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LOS ANGELES, CALIF., May , 1937.

Dr. L. W. HINES,

Anchorage, Alaska.

DEAR DR. HINES: The Riggs Optical Co., at Seattle sent into us the Univis license which you signed under date of March 29th.

We haven't been advised as to whether you were in Seattle and signed this in their office and had the matter of Univis policy and bifocals explained to you or whether you received this license thru the mail and only know Univis from the advertisements in the magazines. If we seem a bit elementary in writing you, please forgive us but we want you to know Univis as well as we can convey

the information by correspondence. We regret that we cannot meet you in person but there are two territories which we have not covered as yet and they are both vacation lands of the Pacific Coast and we have something to look forward to, one is Alaska and the other is Hawaii.

If you have a sizable practice in Anchorage we are prepared to make you an attractive proposition. We have many towns in the United States where we only have one Univis licensee, although there are several other, either or both Optometrists and Oculists practicing. We find that we have to limit the number of outlets for Univis bifocals to approximately 10% of the total in order that we may keep our promise to our good licensees. This means that 90% of the Optical trade cannot obtain or supply Univis bifocals but of course we do have the cream of the trade. Univis bifocals have been on the market now for 10 years, of course not the full line that we now have but the original "B" segment has been out that long. I might mention in this connection that we have patent protection until 1950 on the "D" segment which is the most popular segment at the present time and longer on the "R" segment, this means that our policy of protecting the price and the distribution of these bifocals will continue at the very least 13 years longer. Personally I think the best recommendation for Univis bifocals and the Univis policy is the fact that our licensees of ten years standing are still with us and selling more than ever. We haven't increased the number of licensees during the past three years but last year we had a 77% increase in business, this increase must have come from satisfied Optometrists and satisfied patients.

We have no licensee in Alaska and we would appreciate it very much if you would give us a word picture of the Optical situation in your territory. We do not solicit business in the ordinary sense of the word, we have representatives stationed in different parts of the United States whose business it is to see that the wholesale houses who are licensed to supply Univis bifocals to those of the Optical profession whom we select. They are under contract to supply Univis ONLY to those who we give retail licenses to.

787 The representatives also keep the territory free from price cutting, of course the secret of our perpetual success is that we do not license anyone who has the slightest idea of cutting prices on any kind of merchandise. The second paragraph of the contract which you signed says that you can supply Univis bifocals only as finished lenses to the patients whom you wait upon; that means that you cannot sell another Optometrist a pair of Univis even though he is willing to pay you the full retail price. The best account we have today in Los Angeles is a man whose license was cancelled three years ago because he violated this paragraph, last year he came to us and said "Well I guess you people knew what

you were doing, you warned me once and second time it happened you took action, but up to that time I didn't really believe you would cancel my license, I respect your policy so much that if you will reconsider me, I promise that I will live up to every letter of the contract. I appreciate the protection which your Univis bifocals offer thru your policy to my business." I mention this in passing because this was a large account but his brother was working for a price cutter.

If you know anyone in the States I will gladly tell you whether they are Univis licensee and you can write to them as to how the Univis policy works out in practice. We never have any price cutting on Univis bifocals, the profit to the retailer is what he is in business for and as Mr. Kaye of Hirsch & Kaye told me in San Francisco not long ago, "the Univis policy insures our bifocal profits, we know what the price will be tomorrow and the next day, something we do not know on any other bifocal since everyone is selling them at any price."

We are enclosing certain literature, for your perusal and we would like very much to hear from you before we pass on your application. Do you want an exclusive agency in Anchorage? Would this mean a real advantage to you in your community, I think it would but you are the judge as to this. Sometimes if two men in a community both equally good and progressive they can do each other much good and shut out competition better than can one man telling the story alone.

Please advise if you are of bifocal age or perhaps we might better ask if you are wearing bifocals? We want you to wear a pair of Univis if you are.

We are enclosing a stamped self address envelope for your reply to this letter. We have a San Francisco Office, I just happened to be in Los Angeles on a business trip. We would appreciate learning about how many bifocals you average a month so we would know about how much advertising help you would need and how much business we could expect from you eventually.

Please feel free to ask any questions regarding our bifocals or policy. We haven't gone into the technical side of our bifocals because this is a very large subject and is covered by articles written in our technical bulletin mailed each month but we have by far the most comprehensive literature on bifocals that has ever been written and it's not Univis advertising. Our line of bifocals is also by far the most complete, others have tried to imitate our line but they have fell far short because they have had to omit the most important features because of patents.

We hope to hear from you at your convenience,

Yours sincerely,

R. E. MERVILLE.

388 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

788 COMPANY CORRESPONDENCE, THE UNIVIS LENS CO.

(Confine each communication to one subject)

To L. V. B.

From R. E. M.

Place L. A. Date 5/9/37.

Revoke.

Please cancel Robt. R. Orr's license and write him that any time that he goes into practice for himself and decides that Univis bifocals will be an asset to his practice and for the eyes of his patients we will be only to glad to give him a new license. Also work in the idea that the license is being terminated because you learn that he is employed by a Medical clinic most of the time and this clinic does not have a Univis license.

I learned today that he is employed by the Roose-Loose Clinic. We have canceled other licenses because they have joined up with this bunch who give 25% on all Optical merchandise. Spratts refuse to fill their Rx's.

R. E. M.

789

MAY 11, 1937.

Dr. ROBT. R. ORR,

355 Wilshire Blvd., Los Angeles, Calif.

DEAR DOCTOR: In view of the fact that you were in private practice when Univis franchise was issued to you and are now employed by a clinic not licensed to sell Univis, it becomes appropriate to terminate your Univis license.

In accordance with the clause marked "Third" in the contract with you dated April 1, 1932, we notify you that the license is hereby cancelled.

Please return to us the metal Certificate, duplicate of license and other Univis material in your possession.

At any time in the future when you return to private practice exclusively and decide that Univis Bifocals will be an asset to you and your patients, we will be pleased to resume the connection.

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC.

Reg. No. —.

Copy: REM.

JULY 16, 1937.

H. A. STOCKWELL, O. D.,  
*American Trust Bldg., Berkeley, Calif.*

DEAR DOCTOR: Your suggestion of establishing by contract the retail price for each type and power of Univis lenses is very interesting. We shall give it consideration and will be pleased to receive from you comments on the advantages of doing this.

We note you do not refer to prices being established as minimum—but definitely fixed price in each instance—and if it is your idea that the licensee should be obligated to charge no more than that price it is a phase on which we would like very much to have your thought.

Our contracts were very carefully drawn with regard to intricacies of the national laws on the subject of price control—making feasible the establishing by contract of a minimum price for white lenses and a minimum for tinted. The new legislation on the subject of a retail price control, following that of many states, may permit the incorporation of complete schedule of prices as provision of contract.

We shall be pleased to receive your further comments.

With appreciation of your interest, we are,

Sincerely yours,

THE UNIVIS CORPORATION,

By \_\_\_\_\_

LVB:MC.

Copy: Merville.

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SAN FRANCISCO, CALIF., March 25, 1935.

ALONZO DE JESSOP,

*1041 Fifth Ave., San Diego, Calif.*

DEAR DR. JESSOP: I thank you for your letter of March 22nd. just received.

I am wondering if you are referring or have in mind an instance that we have just been corresponding with Dr. Kenyon and Mr. Daniel about. It is only natural that when something like this comes up that there is a certain amount of conversation among the Optometrists before the answer is forthcoming and I know you to be a fair minded business man and will agree with us that there should be a broadcast of the answer after we have gone to the bottom of the affair. If the answer we have received is not the correct one then we should be so informed but we wrote under date of March 16th to the plaintiff and have not had a reply so we are not sure if the answer is correct or not but that frequently



happens. If the answer we are giving you herewith is correct or isn't correct we would appreciate hearing from you and if the case you have in mind is not the same one we most certainly would like to have definite information.

It has been our experience that it is much more effective to send shoppers out when the writer is known to be in San Francisco than it would be with me in San Diego, in fact for the past several years we handle our investigations by mail to give the defendants the opportunity to convict themselves or come clean. After nine years of this kind of work we think we are pretty good at getting results. If the defendant does not come clean, then we call on them and there is nothing left to do but to cancel the license. You can understand that if we were in San Diego and had shoppers working, anyone who might be tempted to slip would be on their guard. Sometimes we have purposely left thirty or sixty days go by before sending shoppers into certain suspected parties in order that we might get the proper evidence. What we are after are results, not just a shopping tour. I know you will agree with me in this regard.

As I have the story regarding the Daniel matter, it is this. Mrs. F. E. Meyer was refracted by Dr. Blodgett, one of a group of Doctors who are doing the refracting for the Beneficial Health Insurance Association. The prescription was sent to Daniel and Mrs. Meyer paid him \$14.00 for a pair of "D" Univis bifocals and the B. H. I. A. paid him the other \$2.00. I am glad that there are no other Health Associations like this in California and we could very easily say "NO" more Univis in this case, but who knows but what some Optometrist might have the contract next year for this organization. This is what happened in 792 Tacoma with the Northern Pacific Health Assoc. This is an association which is part of the Railroads hospital plan. One year an Optometrist complained about another Optometrist filling Univis Rx's at \$13.00. I investigated and found that the Association paid the other \$3.00 and this amount varied with the amount they had in reserve. The fact that the party who filled the Rx's was an Optometrist in good standing among other Optometrist in Tacoma and the fact that he was getting his \$16.00 the market price in Tacoma and our minimum price I O. Ked. the situation. The following year the plaintiff in this case had the contract with the N. P. H. A. and of course he was then pleased that we hadn't cut off the Univis sales because a good many of the railroad men wear "B" Univis and like them.

I wrote our a series of fourteen questions for Daniel to answer and he answered them all. Now I am not the defending attorney for Daniel. I am simply the Judge now in the case since I have

the information from both sides. Up until I received the information I was the attorney for the plaintiff and was cross-examining Mr. Daniel. Right now I suppose we could send a dozen shoppers in to Daniel and every one of them would be quoted the correct price but if its Daniel you have in mind, wait a few weeks because its results you are after.

I will say that no one has given me the address of the Beneficial Health Insurance Assoc. so that I could send an investigator to them to learn what their policy is. It would seem very logical that in connection with this case that their policy should be investigated. I asked for it in one letter but it was not forthcoming.

You can give us any information and we will keep it absolutely secret because all we need is a lead and we will pay for our own evidence. We never embarrass anyone except the person that is guilty and then you have never heard us broadcast a conviction except those we obtain in court. I notice last month that several licenses were cancelled in Denver and in order to avoid to much comment the Dayton office did not publish the names in our Notification Bulletin which goes to all of the wholesalers in the United States twice monthly.

All we need is a lead and if we thought we could do a better job by coming to San Diego we would do so immediately but we say again its results we are after and we can get more definite results by not being in a city when the shoppers are working. Your State Board of Optometry will bear me out in this statement. We work with them and they work with us you know. We pay for our evidence by paying the shoppers so no other person is involved but there is no use in shopping everyone if there is suspicion pointing to one or two persons. You can give me the information in a letter or the names on a blank piece of paper with whatever information you have.

I thank your for writing. If the volume of Univis sales to which you refer drop because of a lot of untruthful conversation then my presence is needed and I certainly appreciate your advice as given in your letter on this point. You know human nature better than I do perhaps and you know some will complain about conditions but they will not bragg about what we do when we do it and we are not much to bragg either because we believe that "ACTIONS SPEAK LOUDER THAN WORDS." If someone would get up in a meeting and say "The Univis Lens Company have done so and so" but that has never happened, even where we have taken the most drastic actions but there has been broadcast in meetings heresay evidence that had no basic facts and this has hurt us in certain communities and we cannot go around and

say that the person who made this statement in the meeting didn't know what they were talking about. We have to grin and bear it. I thank you Alonzo for writing me and because I know you to be very fair minded I have written very plainly.

Yours very sincerely,

REM: BM.

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SAN FRANCISCO, CALIF., *March 27, 1939.*

DR. HUBERT KENYON,

*647 E. Street, San Diego, Calif.*

DEAR DR. KENYON: Your letter of the 23rd just received and there is a wire laying on my desk which I haven't sent yet. I am sorry that business in Northern California requires my attention for the next two or three weeks, otherwise I would come to San Diego immediately but there is another reason why sometimes it isn't good for a Univis representative to be too near to a city that is under investigation. Now Dr. Kenyon I think you might feel better if I tell you and it's a fact that we are both of the same opinion in this case but I cannot have that statement made public. Up until all of the evidence is in I am the attorney for the plaintiff and in this case you are the plaintiff. After the evidence is all in then I have to sit as judge, of course all of the correspondence goes to The Univis Corporation and they are sort of the United States Supreme Court in such cases. If I was talking to you I know that you would learn in a few minutes how absolutely in agreement we are. We will go still farther and say that all parties **MUST** live up to their Univis contract. The first time we discover a violation, if it is done willfully and with malice aforethought we sometimes cancel a license without further consideration but if there is a willingness to go straight we do give them another chance. One of the largest and best Univis licensees in L. A. today is a man whose license was cancelled about five years ago for supplying one pair of Univis to his brother who at the time was located in with a cut rate place. On the first pair he was warned, on the second pair four months later the license was cancelled. When reinstatement was requested the applicant made it very plain to us that he did not know that we took our licensing and control as seriously as we do and if he was given another license he would live up to it 100%. He is an active member of the association now and is looked up to. The present President of the Oregon Association and the President of the Portland Association of Optometrists, six years ago were the worst advertising pair on the Pacific Coast. I still have several of their ads cut from newspapers at that time. I only mention

this Doctor in connection with the fact that we do have to have a certain amount of tolerance. The factional angle to which I referred is the one always existing between the Guild Optician and the Optometrists. It came to the surface only last week in San Francisco. The Guild put out a book, I believe they call it "Seeing" and the list of the Guild Members is published in the back of the book but the names of the San Francisco members are omitted because the local men work hand in hand with the Optometrists and they did not want to antagonize the Optometrists by having their names appear; however the Oakland's Guild member's name does appear and there is a factional dispute in Oakland between the Optometrists and the Guild members. I really agree with you because I call on all factions, including the Oculists who send their work to the Guild members and those dispensers who are not Guild members and I presume as an observer no one has a better reserve seat than I have and I know the merits of the average Optometrist's refraction as compared with other groups and I know the whole situation. That is the discounts that the dispensers who are not Guild members give to the patients, in fact I have on my desk a book in which I have listed the name of every man in California who makes it a practice to write discounts on his Rx's when that prescription is given to the patient, and I know to whom he sends his patients to have these prescriptions filled. If you could spend a couple of days at my desk Doctor you would I am sure have a greatly inspired confidence in what The Univis Corporation and The Univis Lens Company have done and are doing. In the case we have before us I believe you are correct but I ask that you believe we right in giving the other party every opportunity to prove himself not guilty or guilty. Since I understand that the B. H. I. O. send their members to Optometrists for refraction it would seem logical that they are friendly to the Optometrists and it would seem to the writer that it would be a very easy matter to lay in our hands the correct information regarding their policy. I am not saying that you should do this. That is the reason for my wire. No one to date has given us the address of the B. H. I. O. or who heads this organization. It would seem very logical that they could tell us what their policy is and we will send an investigator to get the facts, at least I hope they will get the facts, not about this one particular case but regarding their whole set-up.

We hope that we get as much publicity of the favorable kind for the good deeds that we have done as we do of the unfavorable kind when one of the Univis licensees do something that they should not have done. I could tell you that there are letters on file in San Diego written in 1939 that would prove how we keep



an eye on your fair City. A certain dispenser was cut off in January of this year from fill Rx's for two parties in San Diego and this was not the dispenser under inditement. I have before me, dated January 17th, a letter written to a Clinic in San Diego, asking them what their policy was. It happened that a party had a license in Olympia, Wash. and when they left Olympia last Fall, the license was cancelled as it usually is when we do not know the new location of the licensee. It is easier to issue a new license than it is to correct some difficulty which might arise regarding the party locating in a community where perhaps we have an exclusive license or certain commitments to our active licensees. One of your local houses was called into a letter conference on this case. You can see Doctor that we are watching over the San Diego Univis licensees all of the time and a lot of things go on which we do not advertise but which would make mighty good advertising in our behalf if they didn't injure the other parties. If you would like to do a little good advertising for us we can furnish you with plenty of data regarding San Diego.

How many M. Ds. do you suppose have been sold on the idea of giving up writing discounts on their Rx's? Why do the M. Ds. write discounts, usually because they want to give their patients the same price as is advertised or given by some cutrater. I know the Optometrists cannot advertise price in California but you should read some of Lainse advertisements. I try to prove to the M. Ds. that such discounts cannot obtain Univis and I have proven to many that discounts are not necessary in general and particularly on Univis bifocals. I can name dozens of M. Ds. who have been converted from the discount idea or policy.

I have just reread all of the correspondence including the 795 fourteen question question'aire which I sent to San Diego and which I received filled out in detail.

Heretofore I have purposely omitted certain details because I did not want to complicate or bring in the personal angle any more than was necessary but since you emphatically ~~so~~ that personalities do not enter into this situation I trust you will give me the information requested on the enclosed question'aire as this may serve to clear up a few angles that we have heretofore felt that had to be diplomatically handled in order not to bring personalities into conflict. I might say that it matters not at all who does the shopping. We sometimes direct the local Association to shop for us and we pay the bill if there is a guilty party brought to light. The State Board of Optometry have Univis lenses available for shopping and we co-operate with them to the fullest extent. Your State Board know very well where we stand on these matters. Dr. Kenyon you would be surprised perhaps how



often personalities do enter into these situations and we are sent on a wild goose chase. We have had it happen several times of late. We investigate every problem and supposed violation and how some of them end up is very interesting. When I see you I will have an opportunity to tell you some of our experiences and some of them Mr. Edgar Hoover would be proud to have in his records I dare say.

Now please give us the answers on the enclosed questions by return mail if you will please and we will by then perhaps have information from the investigator in S. D. I know Doctor that you understand that what we are after is the whole truth and nothing but the truth. I would like to know Dr. Kenyon if you personally or the other men who are in on this situation expect or want us to cancel the license of the party involved. We usually give them a very sharp warning on the first offense and then we shop them periodically with professional shoppers who are also professional chis'lers and we make use of the list of M. Ds. who write discounts on their Rx's. Our shopper gets an Rx from one of these and then they get the discount written or a better one or no discount at all. One of the M. Ds. not long ago gave an Rx to another M. D. and sent him to the dispenser. When the M. D. came to get the lenses he asked for the customary 25% discount, the dispenser couldn't give it because these were Univis lenses, the prescribing Oculist was called on the phone and he said "Didn't you note that I *careled* Univis several times on that Rx. What you suppose I did that for. I know you can't give any discount on Univis." I was rather proud of this as it happened in Glendale last Fall and this was one M. D. whom I had convinced that discounts were not necessary on Univis. I also convinced him that he either had to give the whole cost of the bifocal or charge the full price.

I am sorry to ask you to read such a long letter but these are very vital matters to us. We only have one baby you know, Doctor, and if we lose that, where would we be. I am not speaking for myself but for The Univis Lens Company and if you don't believe that they take the entire Univis situation seriously you should have the shoe on the other foot once, just once and I know you would say "It won't happen again." We have already have had a letter saying "I certainly do not want to lose my Univis license." I would do anything rather than lose it. Because I am now applying for a Guild Membership and I want to build up a good no rebate legitimate business." I will say to you Doctor that I hold no personal briefs in this case. It's strictly a matter of business with me and with our organization. My instructions are "Never let any

quantity of business stand in the way of your doing the right thing. Never let quantity of business to be lost or to be gained influence you in making a decision." So you can see my position is very easy if I feel that I have accurate and definite facts.

Yours very sincerely,

R. E. MERVILLE

REM:BM.

796 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To J. R. S.

From R. E. M.

Place, S. F. Date 3/31/39.

I am sure that Bob Daniel is out on a limb. He came back and said that he shopped Hubert Kenyon etc etc but there seems to be no evidence to support this and there seems to be no evidence to support the practice of supplying part of the cost of a pair of Lenses. The very nature of the Society would indicate this. Its patterned after the King County Medical setup of Seattle no doubt and they never do this and besides the patient can go anywhere they can secure the proper discount. I am asking Kenyon to supply me with the names of those who give discounts to the membership.

Please note letter to Daniel. I think I have covered our proposition pretty well. Unfortunately all of the better Optometrists are in on this but before we get thru we will capitalize on the situation. Daniel's business doesn't amount to much. He averaged  $41\frac{1}{2}$  Prs. for 1938, per month.

I wouldn't be at all surprised if he would dig up an affidavit from some M. D. but we will be very careful to make it plain that said affidavit has to come from the person who handles the funds or wrote the check. I don't believe in giving him an inch. The past history would indicate that we can do better by driving with a tight rein, otherwise we are going to get into a jam in San Diego. You know what a tight proposition we have had there for years and it has paid good dividends and they have had faith in us, their sales have proved this,

R. E. M.

SAN FRANCISCO, CALIF., March 31, 1939.

ROBT. DANIEL,

*Bank of American Bldg., San Diego, Calif.*

DEAR BOB: We are on a larger spot on this proposition than I originally supposed because it seems that the whole Optometrical group, especially the Univis licensees are interested and we have received letters from some of them. I will say that they are not picking on you personally as names have not been mentioned. They are simply bringing to our attention certain unusually ticklish situations which have come up because of misunderstandings.

You said in your letter to Dayton originally that you could furnish us with an affidavit to prove that The Beneficial Society which we understand is a Non-profit, non-commercial plan of the San Diego Medical Association did pay you \$2.00 toward the completion of Mrs. Meyer's lenses. Of course we have only asked this because it has been said by others that this is not the usual practice of the Beneficial Society, in fact its quite contrary to their policy and we have to have something in the form of concrete evidence, otherwise we are told that we are on the sucker list to accept such a statement. Of course this affidavit should come from the person who handles the funds of this society and the one who paid you this money. Since I presume everything is handled by check, they should have a cancelled check by this time back in their files.

These matters are not exactly the most pleasant things to handle especially when we are told that we do not know how to handle matters of this kind by the Univis Licensees, that just happened this week, I received such a letter from L. A. and I received a letter last week telling me that I would believe anything that a dispenser told me and that I had given the defendant plenty of time to fix his records, so you see Bob we do not ask for this kind of a job but you know better than anyone else in San Diego that we have a mighty sweet business to protect and when others know about these transactions there is no opportunity to get out without a thorough investigation or going to the bottom. We are just as far out on the limb as you are; in fact it means a mighty more important angle to us than it does to you and you appreciate this.

If you do put this in affidavit form please do so in such a form and with a signature attached that will hold water because this is not for us. Of course we won't use it, by showing it unless we absolutely have to.

How many others in San Diego give discounts to the Beneficial Society's patients? Who are they? I understand that the Society furnish a list of those to whom the Society members can go and get discounts.

Your early reply will be much appreciated.

Sincerely yours,

REM: BM.

798.

SAN FRANCISCO, CALIF., *March 31, 1939.*

DR. HUBERT KENYON,

*547 E. Street, San Diego, Calif.*

DEAR DR. KENYON: Thanks for the card received together with the filled in questionnaire. You see, Doctor, what I am aiming to do is to collect all of the information before turning the matter over to our Home office. It would appear that in 99% of the cases you would be correct but since we are trying the case on the basis of this one experience I am trying to avoid your being left holding the bag, now what I mean by that is this. Supposing Daniel has sufficient pull, and of course I know of his inclinations toward politics, to get an affidavit as he offered, showing that he did receive \$2.00 from the Beneficial Society. If he does this then the claim of the Optometrical group goes not naught. You know what the judge always says in instructing a jury. "You must be governed by the evidence submitted."

It would appear that the San Diego Beneficial Society is very much like that of the King County Medical Society of Seattle and I know that there are no approvals of past payments there.

If this affidavit is not forth coming then there is no question as to the guilt but if the affidavit is furnished signed by an executive of the Beneficial Society then, Doctor, we will have to make it plain that Univis cannot be sold on this basis in the future. I don't know whether The Univis Corporation would make such a ruling or not in view of the situation in Tacoma. I am speaking strictly for myself, of course I know that Dayton would be glad to eliminate these idiosyncracies, however in Tacoma the Optometrists who have these contracts have agreed on the idea.

I am sure that you understand that we want to do everything that is right to eliminate any monkey business of any kind and to take away every chance of twisting the Univis price structure to a breaking point. The amount of business involved doesn't mean a thing because we could pick up much more business, yes a hundred times more business in any city by simply saying yes to the Optometrists in the Credit Jewelry stores whom you will grant us DO GET GOOD PRICES. We turned down a hundred pair a month

in L. A. just recently, just because we do not like the Credit Jewelry store idea, but they certainly do get the higher prices.

We are going to bat again from two angles. I will say to you NOW that if this party is guilty you are going to get a check and gladly will we write it, because you were entitled to the profit on this job as I see it. If the job was handled correctly, I think you are entitled to the check anyway for I believe "A preventive is better than a cure" and we will class all of this investigation as a "Preventive" and I hope it is that.

Yours very truly,



SAN FRANCISCO, CALIF., April 13, 1939.

DR. HERBERT KENYON,

647 E Street, San Diego, Calif.

DEAR DR. KENYON: I wish I could talk with you rather than write you a letter on this subject and I do not know what the attitude of our executives will be because I have never approached this matter like this before. A letter was written under date of March 31st asking for an affidavit to cover the subject which had been discussed in previous correspondence. We explained who would be expected to sign such an affidavit, i.e., the person who wrote the check for the \$2.00 in question and if possible to send us a photostat copy of said check. To date no reply has been received and I have a cancellation laying on my desk from Dayton. I thought that it might be a good idea to write you before forwarding this. There are several angles which might have more advantages than disadvantages. So far as we are concerned the license is voided. We are not looking for Univis business in the future from that direction so we are not protecting our interests in bringing up this point and if you have never heard me say that I'm not posing as the Billy Sunday of the Optical business you have now seen it in writing over my signature but there is an angle which I believe in and which has been successful in the past and there is a possibility that it might be successful in San Diego but I am leaving the matter entirely up to you personally or you and Dr. Jessop or you, Dr. Jessop and any other man who is as broad minded on these matters as you two gentlemen.

There are many angles to the dispensing business which I do not believe in and angles which I must say I am not proud to admit when I am questioned on the subject and have to admit that I am in the optical business and know of the racket as it is carried on. Univis policy has done much to correct certain of these evils, by permitting no discounts to patients regardless of instructions from those who write the prescriptions. They have permitted no discounts to groups, such as industrial groups of certain branches of the Army and Navy. We have insisted upon a minimum price throughout the United States regardless of the considerably lower prices of other bifocals in the East. In very plain words we have raised the standards of the nonrefracting groups far above what it was previous to our coming into the field. The change in the conditions in Seattle is a sample. Two dispensers were charging but \$8.00 a pair for Krytpoks previous to Dec. 1937. Upon their being placed on the Univis list the price of Univis of course was a \$16.00 minimum for the "D" segment and Univis replaced Krytpoks at their counters, of course there was another reason or angle.

800 The Oculist understood that the cut-rate Optometrists could supply Univis bifocals and were satisfied that their patients therefore be fitted with Univis because they could not take their prescriptions elsewhere and get them filled for less.

Now Dr. Kenyon if you believe that it would be better for *all* concerned, not including us, because we know that we have a greater responsibility to shoulder, to permit the party in question to continue to deliver Univis with the understanding that he is under surveillance and any future violation will mean immediate cancellation. Believe me when I say Doctor that I have written you this letter not thinking of our own business, nor that of the party in question but thinking purely from a general welfare standpoint. I have convinced a good many M. D.'s during the past ten years that it wasn't good business or necessary to write discounts on the prescriptions and I believe that this lesson might be the very thing that will convince another that it isn't good business or necessary to cut prices on any merchandise. I might mention that my instructions from Dayton are "Do not let any quantity of business stand in your way of doing the right thing by the Univis policy. Do not be influenced by business to be gained or business to be lost to go contrary to what you know is right in the face of what the Univis policy stands for." These instructions take the responsibility entirely off of my shoulders for any loss of business due to the enforcement of the Univis policy so you see Doctor that we do not have the volume of business to consider in this case.

I am writing you because I am not on the ground, if you think that I should decide this matter by coming to San Diego I will be pleased to do so as I certainly do not want to do anything but what is right, especially for those who have been so loyal to us and who gave us the information in this particular case.

I await your decision.

Yours sincerely,

R. E. MERVILLE.

REM: BM.

Air Mail.

801

APRIL 15, 1939.

ROBERT L. DANIEL,

*338 Bank of America Bldg., San Diego, Calif.*

DEAR SIR: We regret to advise that investigation of reports from San Diego in connection with sales of Univis lenses convinces us that there have been violations of contract by you.

Therefore, we notify you that in accordance with the clause marked "Third" in the contract, the franchise issued to you in February 1938 under Univis patents is hereby cancelled.

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Please return the samples and other Univis materials with which you were supplied remaining in your possession.

We regret the circumstances that caused this termination of the license.

Yours truly,

THE UNIVIS CORPORATION,  
By \_\_\_\_\_, Vice President.

LVB: Mc.

Reg. No. —

Copy: R. E. M.

802

SAN FRANCISCO, CALIF., April 17, 1939.

Dr. HURET KENYON,

647 E. Street, San Diego, Calif.

DEAR DR. KENYON: You can close a certain chapter of history in San Diego and inform the others that a certain license has been cancelled.

I received a telegram from Dayton Saturday and this morning I received duplicate copies of the letters which went forward, informing wholesale distributors and licensee.

I thank you for the part which you played in this matter and I trust that the action which our home office took proves that the Univis policy stands for all that we claim for it and also stands for no violations.

I do not know just how far the information circulated as to what happened but I am sure that you will see that the information does circulate to the same depth or radius as to what corrective measures we have taken to correct or to protect the future.

Again thanking you, I remain,

Yours very truly,

R. E. MERVILLE.

REM:BM.

803

SAN FRANCISCO, CALIF., April 4, 1939.

Dr. E. C. MURPHY,

c/o H. C. Henshey Co., Santa Monica, Calif.

DEAR DR. MURPHY: We are in receipt of another application for a Univis license thru Reynolds Division of AOCO. No doubt your nurse told you that I called on you the day after you left for the East on your vacation last Fall. In view of the circumstances we are not going to hold your application longer but will pass it thru to our Licensing Committee with the proper recommendations. We trust Doctor that you will read this letter thoroughly as it may give you an idea as to why we do not grant licenses

usually until one of our representatives go over thoroughly the Univis policy and products with an applicant.

In this morning's mail comes a letter from Oregon. The writer gives as his reason for wanting a Univis License that he wants to use our "B" segment exclusively on his patients as he thinks this is a wonderful bifocal. The "B" segment is the least used segment of the entire series and is strictly a vocational bifocal. It represents only about 5% of our total sales. The "D" segment represents 75% of our sales and the "R" segment 20% of the sales. Of the other lenses of course the Univis trifocal is making a real hit wherever it is fitted with intelligence. One Optometrist in Long Beach has made a specialty of trifocals and averages around 20 pairs per month but he has built up a reputation and patients even come from San Diego to see him. There is an advantage in becoming a Specialist, a real advantage. Just drop the word "I'm making a special type of bifocal fitting" and see how rapidly the news will spread among your bifocal patients and their friends and see how much referred business you receive thru this idea. I could write pages of the results that I have heard about as to the working out of this idea. A pair of trifocals fitted to a high school math teacher in Alameda who swore she couldn't wear bifocals meant four pair of Univis "D" bifocals to four friends of hers during the following thirty days after she received her trifocals.

She was fitted with a pair of bifocals by another Optometrist in Alameda but they bothered her. A friend told her about "The Bifocal Specialist" she visited him and she paid him \$25.00 for a pair of Univis trifocals and she liked them, she liked them so well that she sent the Univis Licensee four new patients.

We are enclosing herewith a folder "The Most Complete Multifocal Service." We won't go into the merits of all of the segments but we will give you a few pointers. Do not fit the "B" segment to old bifocal wearers, because anyone who has looked over the top of a bifocal for years will not learn readily to look beneath the segment, however if their vocation demands that they see

804 where their feet are going they will get used to the "B" segment readily enough but I ask that you consider the "B" segment for vocational use only. The contractor who built my home here in San Francisco was wearing kryptoks and complaining about them. He has now been wearing "B" segments for the past six years but the other day he broke a lens and went back to his kryptoks temporarily until he could get a new lens but that afternoon he stumbled over a stake in the ground which he could have seen clearly with the "B" segments. He sprained his arm and couldn't work for two weeks. Needless to say he swears by his "B" Univis bifocals and swears at the kryptoks. The finishing



carpenter who does only fine inside finishing does not need "B" segments.

If you haven't in the past thought of bifocals as something to be studied please do so now because there are many bifocal problems but there are Univis segments to solve everyone of these problems easily.

The Univis "D" segment is the only segment with the Optical center at the natural reading position. In other bifocals the Optical center is either above or below the natural reading point. In the Ultex it is away below the reading position. In the kryptok it is far enough below to be rarely used. In the "R" Univis segment it will hit many desk workers or typists. You note I underscored "Natural" when people are working, they are not always working at their natural working distance or natural reading position and this should be taken into consideration when prescribing bifocal lenses. Each patient's bifocal problem should be thoroughly discussed and analyzed.

I noted that you had modern equipment and a very nicely appointed office. You take pleasure in working with such equipment and you believe that this equipment impresses your patients. You want your office to stand out above others who haven't such good equipment. You will stand out from others in Santa Monica who haven't Univis licenses if you make it part of your procedure to fit the Univis segment which meets the exact requirements of that particular patient.

Now for the policy part of Univis. We guarantee to you that the price of Univis will be protected. We have set up the machinery to do this. We have been keeping our obligation with our licensees now for eleven years. The reason we ask you to sign a Guarantee is not to high pressure you into selling Univis but what is the use of having a Licensee who doesn't sell Univis. We have to extend to him the same protection as to the man who sells 100 pairs per month. The police of Santa Monica are sworn to protect the news boy on the street as well as the President of your H. C. Henshey Company. The business men Optometrists sell Univis for two reasons. The first being, they are good business builders and secondly they know that 80% of the trade cannot sell them and 20% who do sell them have to maintain the minimum price or better. While the Univis policy is new to the Optical business, it's not new to other lines of business. It's the very back bone of many large businesses. The Government is now recognizing that price control is a vital element to good business. We enter the sales each month. The wholesalers report to us where every pair of Univis go, so we will thank you each month as we enter your sales. Do not expect advertising to sell Univis for you. We do not look with favor on general advertising. Your recom-



mendation in your office will sell more Univis than full page advertisements in your leading Santa Monica paper.

Other material will be received from Dayton office. We are always ready to help you with any bifocal problems. Don't overlook the advantage of Compensated segments for cases of Anisometropia. Don't overlook the fact that with Univis segments you eliminate competition.

Yours sincerely,

THE UNIVIS LENS COMPANY.

805

SAN FRANCISCO, CALIF., April 10, 1939.

DR. CARL BURKART,

929 Fulton Street, Fresno, Calif.

DEAR DR. BURKART: I have before a copy of the letter written to you by our Dayton office, also a copy of your letter to them. Had not other matters detained me I would have called on you before this as I contemplated a trip to Fresno.

The fourth paragraph of the Dayton letter covered the subject very concisely. To elaborate we might say that our interest in an application is gauged by the interest of the applicant. We do receive hundreds of applications which are not acted upon because the applicant doesn't know that a Univis license is different from the dozens of others which are presented to you. Since the Univis licensing idea has proven so successful, others are trying to capitalize on the word "License" without any attention being paid to the other details, like for example the number of licensees in the community, the character of the licensee, the interest of the licensee etc., etc. For example there is a home office of a chain of optical stores in California in your town and I happen to know that they have a license for everything except Univis and no doubt they would sell hundreds upon hundreds of pairs if given a license. We were recently offered a hundred pair a month account in one store, not a chain store and this store has the reputation of being the highest price Optical store in Los Angeles and still we did not take them on because they are located in a Credit jewelry store.

We want ethical Optometrists who will sell Univis, maintain the price and abide by all of the clauses in the contract which are not difficult. In return we promise you that the territory will be policed and that everyone on the Univis list will do likewise. We also promise you that we will limit the number of licensees in proportion to the sales of our Univis licensees in that particular territory. For example we have more licensees in Fresno than we have in Sacramento and Sacramento is larger. The reason being that in Fresno it takes more than one licensee to

sell a respectable number of pairs of Univis. In Sacramento we have but two licensees. They sell Univis in Sacramento. Now those who have Univis licensees cannot obtain Univis, therefore it behooves those who can obtain same to make it a point to make each wearer of Univis a sales person for them. There are more patients referred to Univis licensees thru the wearers of Univis than any one item ever invented. 80% of the Optical trade *cannot* supply Univis bifocals, therefore you as a Licensee have a much better opportunity to build up a bifocal business on Univis.

I will leave much to tell you about the line and advantages when I see you. I am enclosing a Guarantee form which please fill in and forward to our San Francisco Office. Upon receipt of this I will write you when I will be in Fresno.

Sincerely,

REM: BM.

806

APRIL 10, 1939.

DR. W. P. REED,  
*Mt. Vernon, Wash.*

DEAR DR. REED: We do not believe we can add very much to our letter of February 24th in the way of explanation as to what a Univis license represents. Since writing you however we have received the new license thru Riggs Optical Company's Seattle office but the license was not accompanied by the other necessary papers.

We are enclosing a Guarantee form, Requisition and Information blanks. These have to accompany the License forms to Dayton.

Perhaps we can best explain the Univis License by saying that this is not just another license. When we do *not* license 80% of the trade this puts the Univis license entirely in a class by itself. The very fact that all wholesalers cannot supply Univis is something to be considered and the fact that we desire to license only those who desire Univis for the purpose of better serving their patients, we have to have some way of finding out "Who wants Univis Bifocals for this purpose and who wants a Univis License just for the purpose of saying that their calendar of Optical Licenses is complete." I am quoting from my instructions from Dayton.

If a person will not sign a guarantee we cannot very well consider them interested in selling Univis. Dr. Reed, we want you as a Univis licensee if you want Univis multi-focal service to better serve your patients and upon which to build a future bifocal business. We understand that you are a comparable young man,

that is when compared with the other Optometrists of Mt. Vernon and as a young man you have a better future than others. As a young man you can build up a bifocal business which you know certain others in Mt. Vernon cannot duplicate or take away from you. One of the greatest advantages of Univis bifocals is the fact that they send to the Univis licensee more referred patients than any other one article in the business and when you realize that there isn't any other item in the Optical line that your competitors cannot supply just as you can, you should realize the advantage of using Univis bifocals on just as many Bifocal patients as possible. Maybe you do realize all of this but we do not know it unless we have it from you in writing or verbally and since we are in San Francisco and you are in Mt. Vernon the only way we can know what is on your mind is to receive a letter from you. I might mention that hundreds of Univis licenses are received which are not acted upon because the applicants do not reply to our letters.

We await your wishes in this matter also your comments.

Yours sincerely,

THE UNIVIS LENS COMPANY.

REM: BM.

807

SAN FRANCISCO, CALIF., April 25, 1939.

FENNIMORE & HARDY,

2106 Shattuck Ave., Berkeley, Calif.

Attention of E. J. Hardy.

GENTLEMEN: Before an application can be layed before the Licensing Committee in Dayton today a Guarantee form has to be filled in and signed by the applicant. The reason for this being that in each community we have loyal Univis licensees and to add "just another licensees" is against the policy of the Univis Company. As an illustration of our policy, in Sacramento there is but one Univis licensee because this one amply represents us and we believe in protecting his interest because he has shown his loyalty over a period of years.

Quantity is not the deciding factor because we just recently turned down an application from Los Angeles which was accompanied with a guarantee of 150 pairs per month.

We have felt for some time that we needed a third good licensee in Berkeley to cover a city of that size and with a third we would be amply represented, provided of course the Licensee was sold on the advantages of the Univis multi-focal service and policy as an asset to their business. If you wish to go into the details as to how to take advantage of the Univis set-up both as to the service angle to your different types of patients, vocationally and otherwise and

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what the Univis policy should mean to your store, I will gladly meet with you at your convenience.

Yours sincerely,

R. E. MERVILLE.

REM:BM.

808

SAN FRANCISCO, CALIF., May 17, 1939.

Dr. LESTER A. GIRSH,

800 State Street, Santa Barbara, Calif.

DEAR DR. GIRSH:

Thanks for your very fine letter of Mar. 10th, on this basis your application has been passed along to the Licensing Committee. We received a hurry up letter from the Reynolds Division asking for a reply via telegraph and since we had already received your letter we O. Ked. the half pair for duplication, feeling sure that our committee will pass favorably on the application.

Investigation and letters all came under the heading of "Protection" doctor and the longer you prescribe Univis for your patients the more you will appreciate what this protection means. Even though you do not see a Univis representative as frequently as other salesmen or representatives is a good indication, however we are always watching over the communities and keeping a particularly keen eye on those districts where we have a large volume of business. Our loyal licensees are interested in their Univis licenses and the Univis set-up to the extent that they help us in many ways and we never embarrass them if they give us information, all we need is a tip and we gather our own information. We spend about \$50.00 a month in California alone, keeping the Univis set-up as clean as we claim it is. It's one thing to pass a law and another thing to enforce it. We enforce the Univis policy, and we have no alibis or excuses, we do not need them.

The wholesalers report to us each month where every pair of Univis goes and we check their stocks and inventories. The number of pairs you use each month is reported to us within four days after the month closes by this system we can know who to be loyal to in the way of restricting the number of licensees and also where we need additional licensees by the lack of interest of some. We have some communities where the Duke of Windsor couldn't get a Univis license if he decided to enter the Optical business in California. No reflections on the Duke but a good boost for our Univis representatives in certain towns and cities.

Any time you want information on special bifocals or information as to what to do in certain bifocal cases, write us. We are bifocal specialists and we will make you one if you will follow certain simple rules. With 23 different types of segments you can specialize in vocational bifocal fitting and do things that several

other Optometrists in Santa Barbara cannot do for their patients. How can a man be a specialist with one shape of bifocal segment, especially one that has been on the market 35 years. Thank you for your letter and your future bifocal business.

Yours sincerely,

R. E. MERVILLE,

REM:VM.

809

LOS ANGELES, CALIF., Nov. 27, 1939.

DR. J. D. HILL,

1020 State Street, Santa Barbara, Calif.

DEAR DR. HILL: I note a letter going thru in regard to your Univis License in Santa Paula. Of course this letter was routine because when a man sells his practice to us its equivalent to his going out of business and the license is cancelled, in other words its not transferred to the other party because we do not know the nature of the other party or his interest in Univis bifocals, as it so happens Dr. Seibert has prescribed several pairs under your guidance no doubt and he has been issued a license since you left Santa Paula.

Now as to your license in Santa Barbara that is another matter which also requires explanation. The word "Protection" really means something in connection with a Univis license, it not only means protection as to price but it means protection as to competition in numbers and unethical competition. There are only three licensees in Santa Barbara and they all are doing well with Univis now it wouldn't be fair to give a license to another party in Santa Barbara, although we will admit the town is large enough to accommodate another licensee unless that licensee would do his share in the Univis set-up, in very plain words, if you were selling Univis in substantial quantities you wouldn't want us to grant a license to another so that he could have the privilege to duplicate your Rx's if one of your patients happened to stroll into his office or so that he could fit Univis to a referred patient if that patient was a friend of a patient of yours. One of the greatest assets of the Univis license if the Doctor works it right is to have all Univis wearers refer their friends to the Univis licensee for the same kind of bifocals they are wearing. This means a lot to the licensee if there are several in town who do not have a Univis license, like in Santa Barbara.

If you believe that the Univis privilege would be an asset to your business in Santa Barbara we would be pleased to hear from you.

We want you to know that we are interested if you are and we want our present licensees to know that you are one of them and will do your part to support their Univis program, if this was not true then a Univis license could not be granted.



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We sincerely trust that we may hear from you in the near future so that there may be no discontinuance of the Univis service if you are interested.

Sincerely yours,

R. E. MERVILLE.

REM:AM.

510 So. Kenmore Ave., Los Angeles, Calif.

810

SAN FRANCISCO, CALIFORNIA, *March 5th, 1940.*

DR. GEO. W. WELCH,

*114 Jenquin Avenue, San Leandro, California.*

DEAR DR. WELCH: We are in receipt of a letter from the American Optical Company of Oakland in reference to your Univis license. Upon investigation it would appear that Jim Farley's department had been sadly neglectful in its duty to a prospective Univis Licensee and has failed to deliver, it is for that reason that I'm enclosing herewith the set of papers which it is necessary for a Univis applicant to sign.

If you would like to be an exclusive Univis Licensee in your town, stretch a point or two on the guarantee slip and we will see what we can do toward giving you the honorable distinction.

I'm not going into a long sales talk on the value of Univis, but we will make a couple of suggestion which if you put into use we know you will find very valuable. These are not the writer's ideas, but they are taken from the experience of some of our large and very enthusiastic and successful licensees in California. If you can prescribe Univis to your patients then there is no use of spending describing the bifocals or selling them, simply tell the patient that you are going to give them the best bifocal and write Univis on your Rx., but when it comes to making delivery to the patient, that is the time to prepare this patient for a good recommendation to other prospective bifocal users. With a Univis license and a knowledge of our complete line of segments of which there are twenty-three in number you can become a bifocal specialist. As a bifocal specialist you can select the proper bifocal for each patient's vocation. In the old days when round top segments were the only bifocals available, everyone had to be fitted with the same type of bifocal regardless of what their work was, but today things are entirely different. Each vocation should be analyzed and each person's work should be to some extent the determining factor as to type of segment they wear. As to being a bifocal specialist, we will give you one example of what this really means; not so very long ago a lady dropped into an Optometrist's store in Alameda and made this remark, "I just dropped in to ask for your advice. I didn't buy these bifocals of you, I've only had them ten days, but a friend of mine

811 told me that you were making a specialty of bifocals and and I thought you might advise me." It turned out that this patient was a high school teacher of mathematics and had been given a pair of Kryptoks by another Optometrist in Alameda who did not have a Univis license. It also turned out that proper lenses for this particular patient was a pair of trifocals. Ten days later she ordered these and was so happy with them that during the next thirty days she sent this Optometrist four patients for the same kind of lenses but since their vocation was not that which required trifocals nor did their prescription, nor their amplitude of accommodation indicate that they had reached the age when a trifocal would be required, they were given the regular Univis D segment.

I do not have to tell you that referred business is the best kind of business and if you describe the bifocal to the patient when you make delivery—tell them all about the advantages of them—they will go out and tell their friends because "What people know about they usually talk about." There is an old adage which goes along with this statement and that is, "What people are not up on they are usually down on," so take full advantage of each Univis bifocal patient and make them walking salesmen for you. The reason I say walking salesmen is that it is much easier for them to walk with this type of bifocal. I am going to send you a Merville Demonstrator which will help you sell Univis in every bifocal case and will demonstrate to the patient, very decidedly, the advantage of the flat top bifocal over the round top.

We hope you stay in San Leandro and that you are entirely successful in your new ventures.

Yours very truly,

R. E. MERVILLE

REM:AM.

812

SAN FRANCISCO, CALIFORNIA, *March 5th, 1940.*

Dr. WALTER W. SCHLICHTER,  
336 A Street, Oxnard, California.

DEAR DR. SCHLICHTER: We are in receipt of your application for a Univis license through the Southwest Optical Company, however, we cannot pass this on to our licensing committee in Dayton, Ohio, with recommendations until we receive the guarantee slip which should have accompanied this license. Beside it will be necessary to return the license, if it is accepted, for a witness signature to your signature as your signature was not witnessed at the time the license was signed.

We do not know how much you know about the Univis policy but since it is entirely different than the licensing system of any other licensed product, we feel that we should explain certain details. First we license only between fifteen to twenty percent of the total optical outlets. This means that eighty percent of the optical trade and profession cannot supply Univis. It is for this reason that we ask the fifteen percent whom we do license to make full use of the privilege extended to them. Where we have well established licensees, like we have had in Oxnard over a period of several years, the word "Protection" really stands for something because we would not think of granting a licensee in Oxnard unless the applicant guarantees to use a goodly percentage of Univis on his patients. There is nothing high-pressure about this system, it is simply that we are protecting a good licensee.

If you had been selling ten to fifteen pair of Univis a month over several years and we should issue a license to another man in Oxnard and he only used the privilege when called upon to duplicate a broken Univis or to supply a pair to a patient who requested them you would not think much of our policy. It is for this reason that we use the guarantee form which we enclose.

Our records show that certain non-licensees in Oxnard have tried several times to obtain duplication of broken Univis but they have been unsuccessful regardless of what they might say to the contrary. These parties have also made application for license but failed or refused to sign the guarantee slip therefore the license has not been granted.

813 There is another reason for our keeping the percentage down to approximately fifteen percent and that is we guarantee to you that non-licensees will not be able to supply Univis and also that only those who are sufficiently interested in Univis multi-focal service and their patients' welfare to use Univis on a goodly portion of their bifocal patients, shall receive Univis licenses.

If you build up a Univis business in Oxnard, you may be assured that we will not issue another license just because someone wants one. This is a very important part of the Univis Protective Policy.

If you are really interested in using Univis in your everyday practice, we will be very happy indeed to go into full detail in regard to the use of our complete service and help you in every possible way in building up a bifocal business. We will be happy to hear from you at your convenience.

Sincerely yours,

R. E. MELVILLE.

REM:AM.

814

SAN FRANCISCO, CALIF., Sept. 6th, 1937.

A. D. ATKINSON,  
Compton, Calif.

DEAR MR. ATKINSON: We are in receipt of a signed application for a Univis License thru [copy illegible]

We have a very excellent licensee in Compton who has been loyal over a period of years and this makes us all the more critical as to any other licensees in your community. You appreciate that this policy on our part makes a Univis licensee in your community all of the more valuable. We limit the number of licensees in a town by the number of pairs of Univis being sold. There are many towns much larger than Compton in which there is only one licensee and no other applicants would be considered. Our people know of no better way of repaying a licensee for the number of pairs of Univis he uses than by being loyal to him and restricting the number of licensees or competitors. A Univis licensee in order to remain on the Univis list must be consistent and use Univis each and every month and keep their promises. We have a policy to enforce and we allow no variances from it and it cost money to keep our word with our licensees and it cost just as much to watch over twenty licensees who use but two pairs of Univis each per month as it does the same number using ten pairs each per month, so we are always on the lookout for the ten-pair accounts. The ten-pair-a-month account is much less apt to violate his contract also.

The forms will be forwarded on to Dayton just as soon as we receive same from you. We are enclosing a self-addressed envelope for the return of same.

Yours very truly,

R. E. MERVILLE.

815

SAN FRANCISCO, CALIF.; Sept. 11, 1937.

DR. W. O. RIFE,  
475 E. Street, San Bernardino, Calif.

DEAR DR. RIFE: Some subjects are extremely difficult to handle by correspondence especially when you want to convey but one meaning but I sincerely trust our actions in the past and the policy of our organization will in a measure speak more plainly than words.

We have consistently turned down applications for Univis licenses from your community but there is one individual who is consistently persistent. Applying for a license first thru one wholesaler and then another and I am forced at this time to write you and I want you to feel perfectly free to write me knowing that your letter will be held in strict confidence unless you should desire that

we impart to the other chap that his license was granted because you were partial in his behalf. We do this sometimes as it creates a good feeling and at the same time they know that we have a real friend in their community and they are much less apt to do something wrong. In one city we let the trade know that we have sort of a Univis Guild and that no one can secure a Univis license unless they are passed upon by the Guild and this policy has helped competition considerably.

The applicant is Lowell V. Duncanson. I am standing directly in the center of the road, Doctor, because I do not know as to whether he would enhance the Univis set-up sufficiently in San Bernardino to cause more people to wear more Univis. We recently received a suggestion from a licensee to the effect that we license a certain man in his town in order that two men in the same community tell the same story, but we do not believe the other party in this case would enhance the set-up to this extent.

Now, Doctor, because we are writing you please do not think that we have any particular ambition except to do the right thing and not to do the wrong thing. We enter your sales every month and the most practical way to thank a licensee for their loyalty is to do just what we are doing in this case when we find it necessary to write. We have turned down other applicants and have turned down this party before as you know but we are informed that conditions have changed since I was last in San Bernardino as to this you are a better judge than I am. We assure you that we have your interest at heart and trust that you will speak frankly.

With kind personal regards, I remain,

Yours sincerely,

R. E. MERVILLE.

816

SEATTLE, WASHINGTON, November 7, 1937.

Dr. J. N. BURGESS,

*Robinson Professional Bldg., Moscow, Idaho.*

DEAR DR. BURGESS: Your letter of Oct. 25th written to Dayton has been returned to me for attention.

We are very glad to reconsider your application for a Univis license and it is possible that I will visit Moscow before I return to our Western Office in San Francisco.

Since you mention other licenses which you have we take the opportunity to point out that a Univis license is entirely different and by saying this we do not mean to cast any reflections on those which you mentioned. We are wondering why you did not mention Panoptik license?

The word license has been so badly misused that it has lost nearly all of its meaning and it is difficult for me to use the English language strong enough to differentiate in actual opera-



tion between the several other licenses on the market and the Univis license. First we license but about 10% of the total Optical outlets and we haven't increased the number of licensees on our list during the past four years. Of course that 10% represents the cream of the profession, not always in the size of business but the most professional men whom we can rely upon for both continued volume of business and upon whom we can place the mantle of responsibility and know it will be carried with credit to the ideals which we believe in.

In order to limit the number of licensees we must ask of each of those who ask for a Univis license, "How many Univis Bifocals do you believe you will use *each month* if you are granted a Univis license?" Everything being equal, naturally we would prefer to have the man who will use the most Univis. For example in Sacramento, Calif. there are nineteen Optometrists and nine oculists but we have but two Univis licensees but one of these use on the average of 130 pairs of Univis a month and the other about fifty. However in Los Angeles we cannot possibly license the largest operators because of the manner in which they conduct their business.

Of the licenses which you mention I dare say at least 90% of the Optical trade are licensed, this cancels their effectiveness. If every automobile dealer in your own town could deliver Fords what would be the use of having a Ford agency. We manufacture and sell Bifocals and trifocals only therefore our policy can be made effective, for if you do not use our bifocals because you haven't a license we do not lose the large volume of other business from you. In just a few words. Our policy and Licensing System is effective because we limit the licensees and police the territory to see that our policy which is our ideal is upheld. Please write me here in Seattle.

Yours sincerely,

R. E. MERVILLE

Spring Apts., Seattle, Wash.

817 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To L. V. B.

From R. E. M. Feb. 3, 1938.

Place Seattle, Wash. Date 1/30/38.

I saw letters going thru to Bellingham Optical Co. and I realize that I should have reported this to you.

There are not many distributors on the Univis Licensed list where the President of the Company does the surface work but its the case here and elaborate letters will not be understood. I

appreciate that I should have written that I detected a thought passing thru Mr. Armstrong's mind that he was thinking of reaching out of his territory for Univis' business and I had to check him but he agreed so I do not believe we will have any trouble but if he went dipping into Everett which is much nearer to Seattle or into Seattle we would have trouble and I know that he had this in mind as he remarked about having friends who would send him business. Of course I could have raised the question if they didn't send him Rx business now what inducement could he offer them on Univis that would cause them to send work from Everett or Seattle to Bellingham and that then I thought that he might some day feel that we questioned his honesty so I simply informed him that we did not feel that it was good business for wholesalers to reach out into each others territories for business unless we would first be acquainted with all of the details surrounding such a necessity.

With this report you will know how to handle him in the future.

R. E. M.

818 R. E. Merville. (Seattle).  
L. V. Browne.

2/3/38.

I guess we were both wrong about the Bellingham Optical Co. matter. When I noticed no mention to the contrary, I supposed you wanted us to send him the regular dope to Distributors about licensing and the state list. One good thing is he can't complain that we held out on him. If you like, and to forestall any foraying out of the territory you want him to serve, you can write him a little general letter and incidentally mentioning that he has been given the regular data supplied to wholesalers—and the list of licensees in Washington state for his information, in which are included the ones in his territory he is to serve.

LVB-MC.

819 Company Correspondence, The Univis Lens Co.

(Confine each communication to one subject)

To L. V. B.  
From REM.

Date 3/14/38.

Place S. F.

Re: Leo. V. Bechtold, O. D., 2065 Lemon Ave., Long Beach, Calif.

This would indicate that the license had been forwarded by mail or a messenger and I haven't much interest in a license which is so signed.

I do not recognize the above street as being one down town.

If this doesn't turn out any better than the one which Lane just dynamited us into O. King for Long Beach. Guaranteeing five pairs and had None for February "Letart."

We have too much business from Large accounts in Long Beach to take chances on licensing too many or accounts who do not belong to the association or who do not come under the heading of "In good standing with Fellow members of the Optical profession" and then again we have too good an oculist business to take a change on advertisers. One little no account Optometrist can spoil a good number of Univis Rx's with Oculis each month if we are not careful.

If we get the O. K. from the larger Optometrists who are using a goodly quantity of Univis each month then we need not feel that our business is in danger without this O. K. anything can happen.

The answer is definitely No until I can talk it over with Long Beach licensees.

R. E. M.

820

SAN FRANCISCO, CALIF., July 4, 1938.

DR. VICTOR W. POULSEN,

28 W. Second Street, Reno, Nevada.

DEAR DR. POULSEN: Thanks for your letter of the 8th and particularly your reference to the future sale of Univis bifocals. I know that you will not be disappointed with the results over a term of years both as to the results with your patients and in the exchequer. I know that you realize that there was no attempt to control retail prices by licensing until Univis showed the way, in fact the two large manufacturers ridiculed our policy and said that it just could not be done. This was over ten years ago and since we have seen many changes in line with our policy. In California we have the California Fair Trade Act which parallels the Univis policy, a uniform price structure for all and a guaranteed profit. A policy is just like a law however it's only as good as the enforcement thereof. Univis policy has been respected because it has been enforced. We just spent nearly \$50.00 in Sacramento to trace a leak. You can depend upon us to protect our mutual interest.

I just recently returned from the Pacific Northwest so I do not believe that I will be at the Seattle meeting. I will see you in Reno sometime after you return however.

Mrs. Merville appreciated very much your kind remarks. Regarding round corner vs. squared corners. Univis have experimented with other corners, I have several samples but the Optometrists have voted nearly 95% for our present forms.

With kindest personal regards, I remain,

SAN FRANCISCO, CALIF., August 12, 1938.

PROVO OPTICAL SHOP,

*Provo, Utah.*

Attention of Mr. D. V. Harwood.

GENTLEMEN: I have before me a copy of my letter to you of April 2nd and your reply of April 8th also the sales records since you were placed on the Univis list and you know as well as we do what these sales records show. Now are you going to prove that our judgment was totally wrong. You will note in our letter of April 5th we said that we rarely ever license an individual or firm without one of our representatives calling on the party or parties first to ascertain the nature of the business and the interest in our product. We made an exception in your case and we sincerely thought that we had not made an error in judgment when we received your letter.

I have to explain these matters to our home office and I ask of you honestly and sincerely, why haven't you used a single pair of Univis bifocals. If you say because you or your Doctors are not sold on them then I can forgive you because I would not expect you to marry a girl or even take out a marriage license for getting married to a girl for whom you do not care.

I can appreciate that since you are located in Provo that you have not had the opportunity to value the Univis policy and the advantage of our exclusive Univis license set up like you would if you were located in one of the large centers. Yes I have been in Provo many times and used to stop at the hotel in which the proprietor was the cook and was famous for his meats.

The medical profession like Univis in the Cities because when they send a patient to the dispenser with the word "Univis" written on the Rx they cannot drop in to the other Optical stores and get prices on having this Rx filled. I waited on a lady the other day in a dispensers store, no bifocal was mentioned on the Rx but she had fallen down stairs recently with a pair of Kryptoks so I showed her the "B" Univis and explained the advantages. She explained that she worked in a store where her office was on the balcony and she had to run up and down stairs dozens of times a day. I quoted her the price and she hesitated and asked if she could get this type of bifocal other places and I told her "YES." I then asked her if she had been to other stores and she told me the name of two and I could honestly tell her that these stores did not have this type of bifocal and I told her why but I did tell her the name of two dispensers within two blocks who had the same bifocal but then I added "Are you thinking of price" and she admitted that she was and then

822 I told her that she could shop if she wished but the price would be the same all over the United States and if she wanted to leave the prescription I would guarantee that she could take her glass after she received the same and if she could obtain the bifocals for any less at any other store that she could come back and I would give her her money back in full for the lenses. I would have gladly done this because it would only mean that I employed this woman as a shopper, something that we are doing whenever we hear a rumor of a slip by someone in price but we haven't actually had a price cut on the Coast in years. Our licensees know that we are using shoppers to keep the Univis policy clean and besides we do not select as Univis licensees those who need business that badly. Our licensees are usually hand picked and that is why I feel so badly in your case. We would much prefer not to have a licensee on our books than to have one who is not making use of the opportunity which he has. Of course as I said before if he does not know that this is an opportunity then we can forgive him, then we should not have issued a license until we knew that he knew or how he felt on the subject of Univis policy and Univis bifocals.

Last winter in Seattle I refused to give a dispenser a Univis license until I was convinced that his doctors would permit him to use a higher price bifocal on his patients. These doctors were not taking commissions, therefore they wanted their patients to obtain their lenses just as cheaply as possible and this dispenser was selling Kryptok for \$8.00 a pair. I called on the Doctors and explained our policy and products and left it to them to think over. Three days later one sent for me and before three weeks were up I had contacted all of these doctors two or three times at their requests. They had decided individually that their patients should be able to buy what they could afford and if some of them wanted the best they should be able to buy it, but what really sold them on the idea of Univis was the fact that the Optometrists in Seattle who were advertising price and those who had down stairs stores of questionable prices could not obtain Univis bifocals at any price and therefore their patients could not compare prices on Univis bifocals. They admitted that their \$8.00 price on Kryptok was only there because they did not want to be embarrassed by having their patients getting a cheaper quotation on the same bifocal as supplied by their dispenser. With Univis 85% of the Optometrists cannot supply it at any price and the M. D.s. like this. In Provo, Utah we could make this 100%.

You know what a fight there is in Salt Lake City between the M. Ds. and the Optometrists and they certainly are fighting it



out on a price basis when there is another answer. Salt Lake City is the only City in which they are fighting this battle out on this basis and it is a shame. Buick still sell automobiles although there are several cheaper cars on the market.

I am sorry that I cannot sit down with you today and talk this matter over, not for the purpose of selling you Univis bifocals but for the purpose of helping you with a problem that all dispensers have. Competition from a group who refract and who can supply the patient with whatever they like, Except Univis bifocals, at any price they wish. I know the dispensers' problems thoroughly and I can say honestly that the dispensers are our largest accounts and 75% of those on the Pacific Coast have consistently pushed Univis bifocals for nine years now and not one of them have ever quit or even slowed down. Now 99% sell Univis.

Please let us hear from you.

Yours sincerely,

REM: BM.

823

THE UNIVIS LENS COMPANY  
DAYTON, OHIO

SAN FRANCISCO, CALIF., *March 10, 1939.*

Dr. G. R. BARNETT,

*405 Braier Building, Lewiston, Idaho.*

Oh! Yes Doctor I remember you very well. I remember that you were up on your Optics because you had attended school in L. A. and I remember at that time I didn't know as much as I do now about anisometropia but Dr. Purviance was a good subject or patient for a pair of compensated lenses. Now I hope my memory hasn't slipped a cog.

Your letter seems to deal with the subject of licenses. We are only interested in licenses as a means to an end and that end is the control and sale of our product. I am going to be very frank on this subject because I believe that you should have and would like to have the information. I have prayed for another manufacturer to take up a policy like that of Univis because if some of the large manufacturers would, it would make it a lot easier for us, especially from this standpoint. It would make their branch offices understand the seriousness of any violations and the difference between the Univis policy or a Univis License and any or all of the other licenses on the market.

For example you mention several other licenses. What does it mean or what do they mean? Is there any attempt at price control? How can there be when *everyone* can sell the products.

Is there anyone in Lewiston that cannot get a Panoptik, Soft-Lite, Orthogon, Loxit, No Screw? We were told and we thoroughly believed for a time that the new Numount mounting was going to be price controlled and licensed but it only took three months for this also to be all shot to pieces. We do not blame anyone for conducting their business as they wish to but when they talk about licenses and more licenses and price control and then not do a thing about it, it would make any conscientious person tired. Every manufacturer with an incorporated name is now making Numount on a royalty basis and selling every little fly-by-night jobber and these little jobbers are selling everyone and the prices have already started to be shot to pieces. I ran into this yesterday in Oakland. I wish it wasn't so but it is and why shut our eyes to the facts?

We have never received an application from you for a Univis license. Only Univis Licensees will sell Tulca lenses in the future. We have taken over the distribution and the research work on the Tulca product. These lenses have been off of the market as you no doubt know for well over a year and three months while we were perfecting a new product. The old Tulca licenses were just like the other licenses, everyone had one but not so today.

824 The fact that we haven't been into Lewiston for the past five years we have sort of let the town and its licensees drift along. No one there is selling any Univis to speak of but your letter has called the condition to our attention and we are going to do something about it.

We appreciate that you have local service from a wholesale house but they will put Univis blanks in stock in Lewiston upon a demand from any one licensee. We know that Riggs Optical Company are owned by Bausch & Lomb and Bausch & Lomb make Panoptiks but Riggs Optical Company Western division have a very beautiful Univis business which means several thousand dollars a month to them and I can say that 95% of the Optometrists and Oculists are more interested in their own business than that of their wholesalers and are more loyal to themselves than the other fellow therefore if they believe that Univis have advantages to them and to their business they are going to use Univis regardless of their source of supply. That has been our experience. Some amateur or inexperienced salesman in your territory about two years ago told certain Optometrists that after a certain date that Riggs would no longer supply Univis. His idea was that the parties he told this to were far enough away from the branch office to which the Licensees were sending the Rx's that they wouldn't find out that they still had Univis but he hoped that the Univis licensees would immediately switch over to another bifocal or bifocals. He had not counted on the fact that

these licensees like Univis bifocals and the Univis policy. I received six letters within ten days and in reply I told the facts to the Optometrists. The question in each letter was "Where can we get Univis service after October 1st."

We do not brag about national distribution and it is for that reason that we have sort of passed over Lewiston. We aim to build up business where we can easily handle it and can keep our promises to our licensees. These promises are that the price will be maintained and that only those licensed for Univis will obtain same. We mean it, that is the difference. Making a law does not enforce it. We do not blame other manufacturers, they make everything, they ask you for your Rx business and if they cancelled your license for this or that they would run the risk of losing your entire business. We can never lose more than a man's bifocal business.

If you want to feature Univis bifocals in your practice and can give us some idea of how many you could use per month we will play ball with you. We mean by this that we will not permit others who are not selling Univis to have licenses or obtain same. A series of letters have already gone forward from Dayton. When we have one or two active men in a community we watch conditions very carefully to see that no violations occur and no new licenses are written without the O. K. of the active licensee. We pride ourselves on a policy of co-operation along this line. We have turned down during the past three months at least six licenses from Oregon because each one came from a town in which we have an active licensee. Did you know that Riggs and all wholesalers report to us each month where every pair of Univis bifocals go. These towns in Oregon were McMinnville, 825 Hood River, Eugene, Bend, Astoria, and North Bend which is three miles from Marshfield and we have a good man in Marshfield. We protect the interest of those who use our lenses. We have had an increase of business from 142 to 27 percent during the past eight years. Every year has shown an increase, 142 being the best year and 27 percent being the lowest.

We have made our policy and plan very plain we believe and if we hear from you we will be glad to work with you, if we do not we won't be any farther behind in Lewiston than we have been during the past five years. We wish you could talk to many of our good licensees in towns the size of Lewiston, they would sell you we know. There is a very definite reason why the Univis series of lenses make for *many referred patients*.

Sincerely,

(Signed) R. E. MERILLE.

copied 4/25/37-mc.

**THE UNIVIS CORPORATION,  
Dayton, Ohio, January 31, 1940.**

**NOTIFICATION BULLETIN No. R-323**

**"REPRESENTATIVE" LICENSEES APPROVED**

You are hereby notified that contracts have been executed with the "Representatives" listed below, licensing them to prescribe and fit Univis lenses. Please note appointments in your territory and add them to your Univis list.

**CALIFORNIA**

Beverly Hills:  
\*Dorr Optical Co. 9395 Wilshire Blvd.  
\*Indicates "Finishing Licensee."  
Los Angeles:  
Dancy, J. H. Remove from list  
Redondo Beach:  
Kemp, M. L. Remove from list

**COLORADO**

Boulder:  
Taylor, Oliver I. Remove from list  
Denver:  
Bloom, J. C. 221 Colorado Bldg.  
Gray, James P. 212 Colorado Bldg.

**CONNECTICUT**

New Haven:  
Smith, Forace L. 818 Chapel St.

**ILLINOIS**

Chicago:  
DiCoscola, Henry E. 3203 W. Harrison St.  
Gammel, M. D. Remove from list  
Godin, Richard J. 1548 Belmont Ave.  
Gunderson, E. B. Remove from list  
Mulley, S. P. Remove from list  
Restarski, Alvin F. (M.D.) 1608 Milwaukee St.  
Therslett, Chas. O. Remove from list  
Vaitush, O. Remove from list  
Elmhurst:  
Lookabaugh, K. E. Remove from list  
Gibson City:  
Butler, A. E. Deceased

**INDIANA**

Fort Wayne:  
Havice, Jay F. Remove from list  
Frankfort:  
Jones, Wm. W. (M.D.) 914 Clinton St.  
Helron:  
Butman, W. C. (M.D.) P. O. Box 156  
Indianapolis:  
Lando, Inc., Leo Remove from list  
Lafayette:  
Spahr, Geo. L. Deceased

**KANSAS**

Eureka:  
Johnson, Bertram (M.D.)

**MICHIGAN**

Benton Harbor:  
Hill, Jonathan S. 169 E. Main St.  
Detroit:  
Cohoe, Don A. (M.D.) 1235 Woodward Ave.  
Skully, G. A. (M.D.) 10134 Grand River Ave.  
Ironwood:  
Lieberthal, P. R. (M.D.) 106 S. Suffolk St.

**MINNESOTA**

Duluth:  
Robertson, Jr., Richard 1 East Superior St.  
Slyfield, F. F. (M.D.) 720 Medical Arts Bldg.  
Montgomery:  
Westerman & Bodaski (M.D.)  
(Successors to Westerman & Westerman)

**MISSOURI**

Buils D'Arc:  
Squibb, Elmer D. Deceased

**NEW JERSEY**

Keyport:  
Prager, Louis I. 35 Front St.  
Newark:  
Bernstein, Joseph 847 Broad St.

**NEW YORK**

Buffalo:  
Schutt, Louis 137 Genesee St.  
New York City:  
Godwin, Horace H. 149 Broadway

**OHIO**

Cleveland:  
Selfert, R. H. Deceased  
Toledo:  
Skow, John D. (M.D.)  
2001 Collingswood Ave.

**PENNSYLVANIA**

Beaver Falls:  
Hartford, Thomas B. (M.D.) 118 17th St.  
Carlisle:  
Baumgardner, P. J. 119 W. High St.  
Clearfield:  
Piper, W. Scott (M.D.) Deceased  
East Pittsburgh:  
Schmidt, Joseph J. 107 Electric Ave.  
Kittanning:  
Glarth, D. I. (M.D.) Deceased

# 424. UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

## PENNSYLVANIA—Continued

Philadelphia:  
 Boyd & Co., H. H. Remove from list  
 Punxsutawney:  
 Wehrle, W. P. Deceased  
 Ridgway:  
 McAllister, J. C. (M.D.) Deceased

## TEXAS

Goose Creek:  
 Levy, Max

## VERMONT

Newbury:  
 Solomon, J. M. (M.D.)

## VIRGINIA

Petersburg:  
 Turner, Wm. M. 146-A No. Sycamore St.

## WISCONSIN

Fairchild:  
 Hendrickson, Alvin O. (M.D.)  
 Janesville:  
 Klein, Theodore W. (M.D.) 19 E. Milwaukee St.  
 Wausau:  
 Schultz, A. B. 315 Washington St.



POTTER & SCHNACKENBRO  
MANUFACTURING OPTICIANS  
20 W. 47th ST.  
N. Y.

~~246613~~

R -25 = +1.75 x 65  
-50 = +1.75 x 115

0.88 + 3.00

John. J. Minors 8 - 45 x 39 - vac 1.5 x 2.0 -

2 in. x 100 in. E. S. G. Drill 1/8

5:30 (827) CIV-10-392 U.S. Dist. Court  
Exhibit A  
June 9, 1941 S.D. of N.Y.

POTTER & SCHNACKENBERG  
MANUFACTURING OPTICIANS  
20 W. 47th ST. N. Y.

✓ 177 H. J. PURDY  
206 Madison Ave

25613

$25 = +1.75$   
 $50 = +1.75$   
aaa + 3.00

minus 8 - 44 x 40 leaf -  
16 x 20 - 2 in to Klen. 25  
ful - 1/2 in

530

(828)

POTTER & SCHNACKENBERG  
MANUFACTURING OPTICALS

20 W. 17th ST.

22

**H. L. PURDY**

506 Madison Ave

1973 ~~00.~~ -3.50 = +5.00 ax 95 add 2.00  
0.5. -2.75 = +4.50 ax 90 add

44/40 Leaf Unwired to GF of  
Decenter & dot in 12

Aug 16/20 R in 3  
L in 2

829

POTTER & SON OPTICIANS  
20 W. 47th St.  
N. Y.

H. L. Potter  
506 Madison Ave

11/17 + 1.50 + 2.25 x 80  
+ 1.50 + 5.00 x 90

ass + 2.50  
h + 2.75

Univis D - 4 x x 40 Clear  
16 x 20 - 2 in 15  
Rec 11/30 (830) 200 Seven 8/10

POTTER & SCHNACKENBERG  
MANUFACTURING OPTICIAN  
20 W. 47th ST. N. Y.

UNIVIS

Art. 100

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POTTER & SCHNACKEBERRY  
MANUFACTURING OPTICIANS  
20 W. 47th St.  
N. Y.

H. L. PURDY  
506 Madison Ave

2517 00 -1.25 = +2.50 at 75  
00 +1.50 at 65

32-3600 44/39 Orbital Mirror D 100 ft  
14 2/30 in 1

Mon 530 Decenter Dist Rm 1 - Dist 1  
Leg Total Rm 2 L-P (832)

# ANISOMETROPIC RX's...

The identification of and  
the correction of vertical  
prismatic effects of the  
lens design.

PART ONE—being of particular interest to the REFRACTIONIST:  
commencing Page 2

PART TWO—being of particular interest to the TECHNICIAN:  
commencing Page 5

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ANISOMETROPIC RX's

## ANISOMETROPIC RX's...

## PART ONE

Being of particular interest to the  
REFRACTIONIST.

This treatise deals with the computation of and the equalizing of the various prismatic effects at the reading depth in anisometropic lens prescriptions, or distance prescriptions calling for a different power in the near meridian of the right than of the left lens.

The anisometropic patient during refraction looks through the optical centers of the trial lenses. The refractionist obtains a prescription by center vision through the testing lenses.

Yet, when the patient commences to read with the finished glasses, the naturally lowers her eyes and reads through a point in her lenses which may be from 11" down to 6" from below the optical center, as Figure 1.

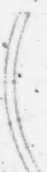


Figure 1

Let us call that in Figure 1 the reading depth is 10 cm. That is, the patient reads 10 mm below the distance opt. center. Recalling Prentice's Law, the center A 1.00 D distance is equivalent, and you have 1 prism. You can understand the prismatic effect at the reading depth.

Had the Rx in Figure 1 been 1.1 +2.00, the vertical prismatic effect of the right and left lenses would have been exactly equal and, as long as the prismatic effects are equal, there will be no artificially created vertical phoria when reading.

Similarly, had the Rx in Figure 1 been 0.1 -2.00, the vertical prismatic effect of the right lens would equal exactly that of the left lens and no disadvantage to the patient would result.

Remember this, that when both lenses are equal in the near meridian, whether the Rx is 1.10, or 0.10, or 0.10 -2.00, or 0.10 +2.00, or 0.10 -2.00, there will be no artificially created vertical imbalance.

But, suppose Figure 1 had been any one of the following three Rx's:

Rx A  
R 1.00  
L -1.00

Rx B  
R 1.00  
L -1.50

Rx C  
R 0.50  
L -1.00

Then what?

Examining Rx A at a 10 cm reading depth, we find the patient will try to read through 2.5 D artificially created vertical imbalance (i.e.,

R 1.0 base up  
L 3.5 base up.

NET 2.50 hyperopia

The three foregoing prescriptions are elementary examples of the types to be discussed in this treatise.

Detailed instructions, together with ready reference charts for the computation of more complicated prescriptions, are given further along in this publication.

But first, please, consider this Rx:

Rx D  
R 3.00 -2.50 45  
L -3.00 -3.75 170

ADD +2.00  
14 - 47 Perimetric,  
Segs 16 1/2 high,  
Reading depth 10 mm.

And then carefully examine Rx E:

Rx E  
R 1.00 -1.50 15  
L -2.25 -2.00 180

Add +2.00  
14 - 47 Perimetric,  
Segs 19 high,  
Reading depth 10 mm.

Study Rx D and Rx E again.

Rx D actually has an unequal prismatic effect of 1.31, although without studying the Rx you might expect such lens imbalance.

Rx E produces only 0.69 artificially created vertical imbalance, or, might say, no imbalance, although at first glance you probably anticipated a far greater amount.

Let me call your attention once more to Rx D and Rx E as a warning never to discuss any Rx with a casual glasses fitter, since breaking of an overbalanced Rx often produces an artificially created vertical imbalance to an uncomfortable degree.

What is "an uncomfortable degree"?

Ah, there you'll have to let your conscience be your guide!

It is my observation that the average person (free of any real hyperphoria) will break fusion, no doubt, when a 2 or 3% or 3 D prism is held either before up or base down before one eye.

Presumably, being more often subject to a better condition because of Father Time, sometimes break fusion with only a 1 D vertical prism, or even less.

Therefore, "an uncomfortable degree" may mean 2 D of artificially created imbalance for Mr. Alpha but only 30 D for Mr. Beta. And I can't see how you satisfactorily can set up a hard and fast figure above which amount you compensate for everyone and below which you let nature take its course, can you?

It is granted that a person can overcome vertical prism; can fuse up to that point where double vision ceases, but why should you want him to do so?

Even when the vertical prism is such that the patient doesn't complain of a doubled image, one above-the-other, he sometimes perceives letters "feathered" or slightly elongated, or even "gray" instead of black.

To overcome, when possible, any amount of artificially created vertical imbalance, the patient must have the nerve supply of his superior and inferior recti. The effect is quite the same as if, every time a perfectly balanced emmetrope sat down to read, he would try to read through one plane prism base up over one eye and one base down over the other eye. Sounds silly, doesn't it? And yet, in one out of every fifteen of your prescriptions, that has been exactly the effect upon your patient if you have not compensated to equalize the right and left vertical prismatic effects at the reading depth.

In some Rx's the originally created vertical imbalance is so great, that compensation results, the brain ignores the image received from one eye and all the reading is done with the other eye. In many such cases of suspension, where such a vertical imbalance has been induced at the reading depth, over a period of years, some refractometers seem to hesitate to compensate, stating that they prefer to let sleeping dogs be. In such cases where one eye suspends its reading you'll have to use your own good judgment. I should think, however, that if you could gain the confidence of such a patient, and if the patient could afford

the time and the cost, you certainly should compensate and balance the optical (prismatic) effect at the reading depth in the lenses, and then should trust the patient to read wisely. That's striving for perfection, of course, but it's been said that no lens has yet been made which might be termed too good for the average eye, so let's have a little striving now and then.

After there's the patient whose Rx's over a long period of years have contributed an artificial vertical imbalance at the reading depth and over that long period of years the patient partially has overcome the artificial vertical imbalance by developing a neutralizing hyperphoria, with this acquired hyperphoria is manifested even when looking straight ahead through the distance optical centers. Again, perfection would call for an accurate balancing of the vertical prismatic effect at the reading depth in the lenses and then eye training procedure until the acquired hyperphoria disappeared. But use your own judgment.

If you strive for perfection in every Rx, then you will compensate every one of your Rx's for artificial imbalance at the reading depth in the lenses, compensating to the well known glass's weight.

Bear in mind that you want equalized vertical prismatic effects at the reading depth—that it matters not whether both eyes experience an equal amount of vertical prism base up, or whether both eyes experience an equal amount base down—just as both eyes are equalized at the reading depth.

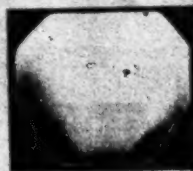
But if the prismatic effect at the reading depth in one lens is greater or less than in the other lens, then compensation is indicated.

And UNIVIS provides the most comprehensive system of equalizing imbal-

ance by making available four distinct methods:

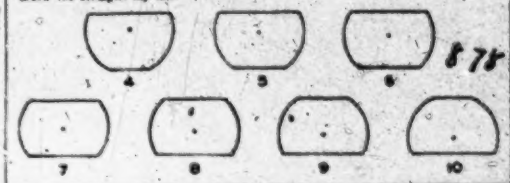
- 1 COMPENSATED FLEXIBLE CENTER SEGMENTS.
- 2 BI-CENTRIC CLEAR OFF PRISM GRINDING.
- 3 STYLE "B" PRISM CONTROLLED SEGMENT.
- 4 CIRCULAR PRISM CONTROLLED SEGMENT.

Figure 2. Compensated (Flexible Centers)



Vertical prismatic effect at the reading depth resulting in up-tiltation up to about 1 1/2% may be neutralized by variation in length of top and bottom lines of the segments which automatically controls the positioning of the optical centers of the segments themselves. This is an entirely correct method of controlling imbalances without resorting to the weight or thickness of the lens and without the resultant unsightly appearance of ordinary prism segments. The segment lines are very thin and inconspicuous in the wearer. Compensated Segments 4 to 10 are illustrated below.

COMPENSATED SEGMENTS 4 to 10—The numbers also indicate in millimeters the position of the optical centers of the segments themselves in relation to the tips of the segments. The optical center of Segment 4, for instance, is 4 mm below the straight top line.





Page 4

ANISOMETROPIC R<sub>1</sub>'s

Figure 4. Prisms (Slab-off)

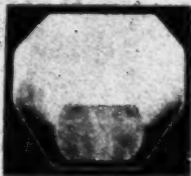


When vertical prismatic effect at the reading depth results in an imbalance of around 1.50 D or more, this method is recommended most highly. This equalizing prism is placed over the entire lower field by a grinding process. No excessive and obviously thick prism lines, absolutely accurate in prism power, and by far the least objectionable in appearance to the wearer. The SLAB-OFF PRISM has the added advantage of affording balanced vision should the

wearer look at the ground through the distance portion at the side of the segments. Numerous cases on record with equalizing prism powers up to 3.00 giving excellent results.

Either Univis style B, D, or R may be used in conjunction with Accurate prism grinding.

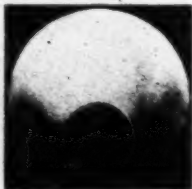
Figure 5. Style "R" Prism Controlled



A special process recently developed permits prism in the "R" segment itself without altering the shape of the segment. Top and bottom lines of the "R"

segment are of equal length. Segment prism may be base in, out, up, or down, from 50 to 250.

Figure 6. Circular Prism Controlled



Besides equalizing vertical prism, prism power from 50 to 250 can be obtained at any axis. From 50 to 250, the diameter of the segment is 14 mm. For 250, a 14 mm segment is used. The edges of this circular prism controlled segment are left gray and non-reflective.

In conclusion let me hammer home my belief that proper compensation for artificially created vertical imbalance at the reading depth is just as much your obligation to your patient as is your prescribing of cylinders where your findings indicate cylinders are needed. Why not instruct your grinding laboratory to compute all of your prescriptions and, where indicated, to equalize the vertical prismatic effects of the right and left lenses?

After all, your patients are entitled to the best your knowledge and skill can give them, aren't they?

.....

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## ANISOMETROPIC RX'S...

## PART TWO

Being of particular interest to the  
TECHNICIAN

1. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

2. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

3. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

4. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

5. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

6. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

7. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

8. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

9. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

10. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

11. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

12. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

## OPTICAL CENTER

The optical center of the distance prism should be placed in the normal drilling line. The following chart gives the mechanical distance from the bottom of the hole to the optical center of the prism.

Vertical dimension of lens	Vertical dimension of lens	Round distance of lens
25 mm	26.5 mm	17.5 mm
36 mm	21.0 mm	18.0 mm
37 mm	21.5 mm	18.5 mm
38 mm	22.0 mm	19.0 mm
39 mm	22.5 mm	19.5 mm
40 mm	23.0 mm	20.0 mm
41 mm	23.5 mm	20.5 mm
42 mm	24.0 mm	21.0 mm
43 mm	24.5 mm	21.5 mm
44 mm	25.0 mm	22.0 mm

13. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

14. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

15. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

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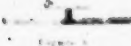


Figure 1

16. **VERTICAL**—The vertical effect of the vertical prism is the difference of vertical prisms at the vertex depth of vision in which the left distance prism differs from the right distance prism in the vertical.

Figure 2

[illegible]

## REAGENTS • 105

The meeting should be, the speaker said, a demonstration of leadership, with the speaker stating that the delegates were expected to stand on the right through what the speaker termed the "dark tunnel."

[illegible]

The sample "movie" takes a little over 10 min to learn the patient's exact reading depth (lines of text) and on the "movie monitor" and in some future articles we'll try to explain it for the benefit of those who are new to life.

What's the deal, the doghouse when sending  
South to sea? **Debut** 10

Here's how the program works: you  
reading right in front of you.

... through the ... and ...  
... with ... the ... leading  
... through a ... below it  
... by the ... as ...  
... the ...

**Q** Now if I have dug up a hole in the ground and put a bomb in it, will it explode? Will it go off?

If a Unit is up to only 3 men, the  
commander should find a way to get  
up to 4 men, or even 5.

The lateral center and the dorsal center are about equal, but each is less than the medial center (23 mm high).

The first set of results shows that there are no significant differences between the two groups in any of the variables measured. A significant difference was found in the mean and maximum depth of the two groups (Table 2).

The formula for determining the "cost" of the stock is the price received plus the \$1 stock dividend.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

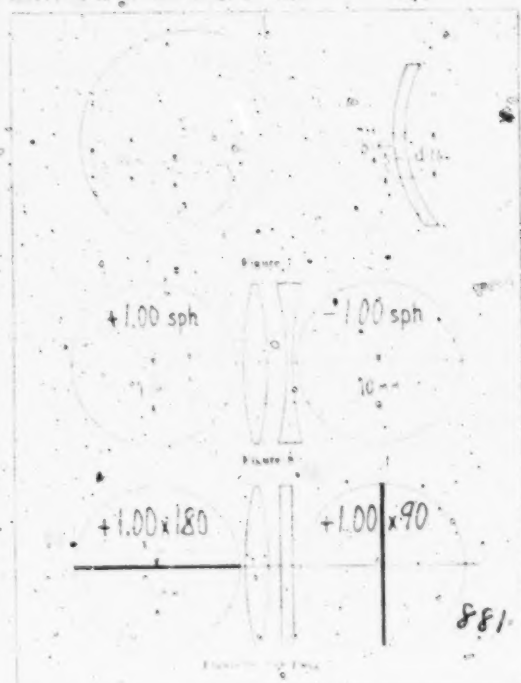
## A. N. I. s. i. b. M. D. I. E. C. I. P. I. S. R. S.

For more information, call 1-800-368-6868 or visit our website at [www.3m.com](http://www.3m.com).

1. *Chlorophyll a* (Chl *a*)

[illegible]

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.



## ANISOMETROPIC RX.

Page 7

Cylinders, and produce prism when corrected of course.

A 1.00 cylinder and an spherical lens are placed in the 2mm working field. I give 100, the full 1.00 is in effect in the 2mm meridian. Therefore 1.00 x 100 produces 1 prism diopter at a 10 mm reading depth. Whereas a 1.00 x 50 produces zero prism at 5, a 2.00, 10, 15 mm in any other reading depth. See Figure 2 on preceding page.

The formula for computing the prism effect of cylinders of any axis at the various reading depths:

**Formula**

- P = Prism diopter.  
C = Cylinder.  
L = Reading depth in centimeters.  
A = Angle in degrees.

The basic chart can also, I think, be used by using our VERTICAL PRISM EFFECT CHART FOR CYLINDERS which appear at the end of this publication. We have a different cylinder chart for each different reading depth.

Turn to the 8 mm CYLINDER CHART.

Across the top of this chart are listed cylinder powers from .25 to 5.00.

Down the left hand side of this chart we have the AXIS from 0 to 90 and up the right hand side we have the AXIS from 90 to 180.

Suppose a lens is a 2.75 cylinder axis 155. Find the 2.75 CYLINDER column at the top and the AXIS 155 row at the right hand side of the chart. Follow the 2.75 CYLINDER column down until it intersects the AXIS 155 row, and you find 1.91.

Thus, according to our 8 mm CYLINDER chart a 2.75 axis 155 produces 1.91 prism-diopters base DOWN at an 8 mm reading depth. The same chart shows that a 1.75 axis 80 produces 0.41 base DOWN. And a 2.57 - 1 produces 0.37 base UP at an 8 mm reading depth.

Remember always that - produces base UP prism - that - produces base DOWN prism at the reading depth.

By the way, you know that the symbol - means "prism diopter".

Now let's take some prescriptions.

**Rx 1.**

R = 1.00

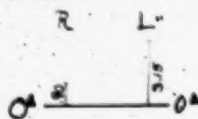
L = 2.50

Reading depth 8 mm.

Referring to our chart for spheres, in the 8 mm column, we find .80 prism diopter base UP in the right eye, and

1.5 prism diopters base UP in the left eye or an artificially created vertical imbalance of .70 prism diopters enough to make most persons begin to see double.

But Marks suggested the following in the graph in diagram which I recommend that you use always to avoid error. It will absolutely eliminate error.



**R1**

So, on our Rx 1, we first have drawn a short, horizontal line which we label our "zero prism line", just like the zero line on a thermometer. (And, just like a thermometer, - is represented by a vertical line extending upward from the zero line, and + is indicated by a vertical line drawn downward from the zero line.) In Rx 1 both lines are - so both R and L lines are drawn upward from zero line. And you can see at a glance "exactly how much prism there is in L than in R.

**Rx 2.**

R = 1.25

L = 4.00

Reading depth 8 mm.

The chart shows:

R Sph = 1.00 L Sph = 3.20

The graph shows:



Artificial imbalance in Rx 2 is 2.20 prism-diopters

**Rx 3.**

R = 1.00 - 1.00 x 45

L = 2.25 - 2.00 x 150

Reading depth 8 mm.

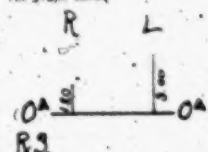
The chart shows:

R Sph 80 L Sph = 1.90

R Cyl = -40 L Cyl = 1.20

R Total = 1.30 L Total = 3.00

The graph shows:



Artificial imbalance .60 prism-diopters

**Rx 4.**

R = 2.50 - 1.00 x 10

L = 3.00 - 2.5 x 105

Reading depth 8 mm.

The chart shows:

R Sph = 20 L Sph = 2.40

R Cyl = 75 L Cyl = 1.50

R Total = 1.15 L Total = 2.90

The graph shows:



Artificial imbalance 1.75 D

**Rx 5.**

R = 1.75 - 3.25 x 75

L = 3.00 - 2.75 x 105

Reading depth 8 mm.

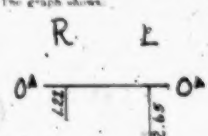
The chart shows:

R Sph = 1.40 L Sph = 2.80

R Cyl = 18 L Cyl = .35

R Total = 1.23 L Total = 2.60

The graph shows:



Artificial imbalance 1.65 prism-diopters

**Rx 6.**

R = 1.75 - 3.25 x 75

L = 2.50 - 2.75 x 105

Reading depth 8 mm.

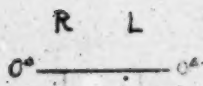
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## ANISOMETROPIC RX.

Page 9

**Rx 10.**

Artificially created vertical imbalance  
has to show to be 1.33 D, although  
without studying the Rx you might ex-  
pect much less imbalance.

**Rx 11.**

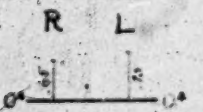
R: 1.50 - 1.00 x 180  
L: 2.00 - 1.75 x 90  
ADD: 2.50  
4 in. 40 Columnar Stencil  
Segs 15 mm high  
Reading depth 10 mm  
R Spk: 1.50 L Spk: 2.25  
R Cyl: 0 L Cyl: 0  
R Total: 1.50 L Total: 2.25

**Rx 11.**

Artificially created vertical imbalance  
has to be 0.25 D.

**Rx 12.**

R: 1.50 - 1.50 x 180  
L: 2.25 - 2.00 x 180  
ADD: 2.50  
4 in. 40 Formative  
Segs 15 mm high  
Reading depth 10 mm  
R Spk: 1.50 L Spk: 2.25  
R Cyl: 1.50 L Cyl: 2.00  
R Total: 3.00 L Total: 4.25

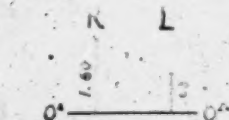
**Rx 12.**

Artificially created vertical imbalance  
in this Rx is only 1.0 D, although at

first glasses you probably anticipated a  
far greater amount.

**Rx 13.**

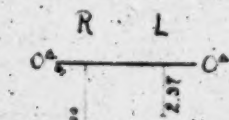
R: 2.75 - 2.50 x 112  
L: 3.75 - 3.50 x 112  
ADD: 2.50  
4 in. 40 Stencil  
Segs 15 mm high  
Reading depth 10 mm  
R Spk: 1.50 L Spk: 3.00  
R Cyl: 0 L Cyl: 0  
R Total: 1.50 L Total: 3.00

**Rx 13.**

Artificially created vertical imbalance  
is 0.25 D.

**Rx 14.**

R: 1.50 - 1.00 x 180  
L: 2.00 - 2.00 x 180  
ADD: 2.50  
4 in. 40 FVL  
Segs 15 mm high  
Reading depth 10 mm  
R Spk: 1.50 L Spk: 3.00  
R Cyl: 0 L Cyl: 1.00  
R Total: 1.50 L Total: 2.00

**Rx 14.**

Artificially created vertical imbalance  
is 1.00 D.

The prescribed 1 D UP and 1 D  
DOWN in this Rx 14 is ignored during  
the computing of the artificially created  
vertical imbalance, just as is the Rx R

**Rx 15.**

Let me call your attention once more  
to Rx 10 and Rx 12 as a warning never  
to discard any Rx with a casual glance,  
because their scrutiny of a seemingly  
balanced Rx often discloses an artificial

ly created vertical imbalance to an un-  
comfortable degree.

That includes the computation of the  
artificially created vertical imbalance at  
the reading depth.

Next we take up the actual equalized  
or concentration of such vertical imbal-  
ance or inequality.

Although UNIVIS provides the most  
comprehensive system of equalizing im-  
balance by making available four dis-  
tinct methods: Compensated Flexile,  
Cylindrical Segments, Bi-centric Slab-off  
Prism Grinding, Style "E" Prism-Con-  
trolled Segment, and Circular Prism-  
Controlled Segments, see Figures 2, 3, 4,  
and 5 in PART ONE, I suggest you study  
the Compensated Segments and the Bi-  
centric Slab-off Prism Grinding for all  
cases of artificially created vertical im-  
balance.

The SLAB-OFF PRISM (also known  
as BI-CENTRIC GRINDING, because in  
reality that is exactly what it is, a dis-  
tinct portion with two optical centers,  
see Figure 10) may be used with any  
Univis bifocal style—the R, the P, or  
the B.



Figure 10

As its name implies, the Slab-Off  
Prism is ground by slabbing off a portion  
of the entire lower field of the distance  
as well as the reading field on one lens  
to raise the image of the other eye, an-  
alogous of Rx 1, Rx 2, and Rx 5, which  
follow.

The COMPENSATED SEGMENTS  
should be used where the artificially cre-  
ated vertical imbalance is less than is  
mechanically possible to be compensated  
with the Slab-Off Prism. We give you on  
each page illustration of Compensated  
Segments 1 to 50, together with a re-  
ference chart for speedy selection of  
segments.

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## A. N. S. O. M. P. I. H. O. P. I. C. B. a. 7.

COMPENSATED SEGMENTS 4 to 10 the numbers also indicate in millimeters the position of the optical center of the segments themselves in relation to the tops of the segments. The optical center of Segment 6, for instance, is 2 mm below the straight top line.



Creating a difference between optical centers of the segments themselves of

with ADP	0.75	0.8	1.5	2.0	3.0	3.5	4.0
0.75	10	20	30	40	50	60	70
1.00	15	25	35	45	55	65	75
1.25	18	28	38	48	58	68	78
1.50	20	30	40	50	60	70	80
1.75	22	32	42	52	62	72	82
2.00	24	34	44	54	64	74	84
2.25	26	36	46	56	66	76	86
2.50	28	38	48	58	68	78	88
2.75	30	40	50	60	70	80	90
3.00	32	42	52	62	72	82	92
3.25	34	44	54	64	74	84	94
3.50	36	46	56	66	76	86	96
3.75	38	48	58	68	78	88	98
4.00	40	50	60	70	80	90	100

**EXAMPLE**—If the imbalance at the reading depth is computed to be 36.5, and if the ADP is a +1.75, we search in the ADP(+1.75) row until we find the nearest figure to the desired 36.5, which in this case we find to be 33.1, located in the same column. Thus, in this example, we would prescribe Compensated Segments 4 and 7 because there is a difference of 4 mm between their optical centers.

When this reference chart calls for, say, a 2 see difference between the optical centers of the segment themselves, you could combine Compensated Segments 4 and 7, or you could combine Segments 5 and 8, or Segments 6 and 9, or even Segments 7 and 10 - just as there is a 2 mm difference between the two Compensated Segments and I would suggest in such a case, however, that you use the 4 and 7 combination.

Where the reference chart calls for a 1 mm difference, I would suggest combining Compensated Segments 1 and 2, 3 and 4, or 5 and 6.

Where a 2 has difference is required combine segments 4 and 8, or 1 and 7.

When a 3 sec. difference is needed combine segments 4 and 7 preferably or 5 and 8.

Where a 4 mm difference is wanted  
combine Segments 4 and 5

For a 5 mm difference, combine 5g  
meals 1 and 2

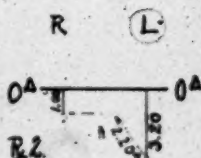
And for a 9 mm difference, compare  
composites 1 and 10, of course.

Earlier in PART TWO of this publication I have given fourteen descriptions covering nearly every possible type you're likely to come across. The artificially created vertical imbalance at the reading depth of each of these fourteen presentations has been computed in the preceding pages, and here follows a recapitulation of the fourteen Rx's and the recommended method of equalizing same.

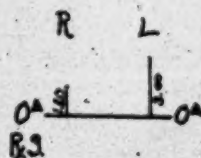


RL

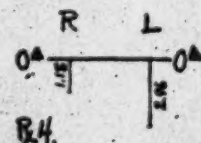
\* 2 BB's, unrefined molasses. Use SLAB  
CUP & PRISM on right lens.



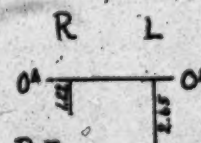
229. artificial inhalant. Use SLAB  
(OFF PRISM) as left lens.



1.00. artificial imbalance Use RLAB  
OFF PRISM on right lens



4.78: artificial substance. Use BLAR  
OFF PRISM on left lens.



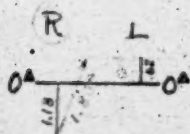
R5

1.42/- artificial substance. This, being a single vision lens, slab-off from would have to be used on the left lens. Had there been a reading addition, compound curved segments possibly would be used.

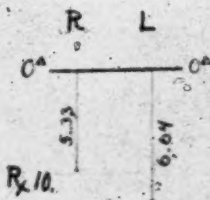
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ASTHOMETRIC RAYS

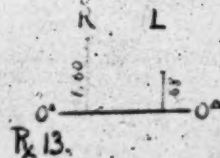
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R6. artificial imbalance. Use SLAB OFF PRISM on right lens.



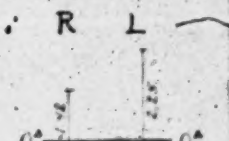
Rx10. artificial imbalance. Reading AID 2.000, combine COMPENSATED SEGMENTS 1 and 2 using No. 8 on right lens, No. 4 on left lens.



Rx13. artificial imbalance. Reading AID 2.000, combine COMPENSATED SEGMENTS 1 and 2, or 1 and 3 using No. 8 on No. 9 on right lens, No. 4 on left lens.



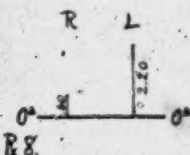
R7. artificial imbalance. Use SLAB OFF PRISM on left lens.



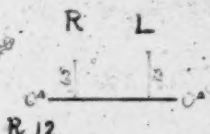
Rx11. artificial imbalance. Reading AID 2.000, combine COMPENSATED SEGMENTS 4 and 5 using No. 8 on right lens, No. 7 on left lens.



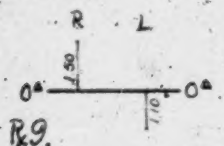
Rx14. artificial imbalance. Use SLAB OFF PRISM on right lens.



R8. artificial imbalance. Use SLAB OFF PRISM on right lens.



Rx12. artificial imbalance. The trial is correct. DO NOT ATTEMPT TO COMPENSATE.



R9. artificial imbalance. Use SLAB OFF PRISM on left lens.

Let me remind you that you must know the reading depth before compensating the vertical prismatic effect. Study again the nomenclature relating to the reading depth and Vergence.

At first thought you may feel that all this will entail extra work and extra expense. But don't forget that the optical industry and the refracting profession both have come a long way over the days, when periscopic correct and accurate spectacles were the last word in ophthalmic lens developments. Daily by constantly increasing the ocular benefits in the wearing of a pair of lenses can you get so advanced?

Who of you wants to stand still?

I hope this lecture will be of some use to those who continually try to turn out each prescription better than the last one.

VIRGIL ROY HANCOCK

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## ANISOMETROPIC Rx's

VERTICAL PRISMATIC EFFECT CHART FOR SPHERES

THE SPHERE	ACTUAL AMOUNT OF PRISM INDUCED BY THE SPHERE OF AN RX AT A READING DEPTH BELOW THE OPTICAL CENTER OF THE DISTANCE LENS OF					
	6mm	7mm	8mm	9mm	10mm	11mm
.12	.07	.08	.10	.11	.12	.13
.25	.15	.16	.20	.22	.25	.27
.37	.22	.27	.30	.33	.37	.41
.50	.30	.35	.40	.45	.50	.55
.62	.37	.44	.50	.55	.62	.68
.75	.45	.53	.60	.67	.75	.82
.87	.52	.62	.70	.77	.87	.95
1.00	.60	.70	.80	.90	1.00	1.10
1.25	.75	.88	1.00	1.12	1.25	1.37
1.50	.90	1.05	1.20	1.35	1.50	1.65
1.75	1.05	1.23	1.40	1.57	1.75	1.91
2.00	1.20	1.40	1.60	1.80	2.00	2.20
2.25	1.35	1.58	1.80	2.02	2.25	2.47
2.50	1.50	1.75	2.00	2.25	2.50	2.75
2.75	1.65	1.93	2.20	2.47	2.75	3.02
3.00	1.80	2.10	2.40	2.70	3.00	3.30
3.25	1.95	2.28	2.60	2.92	3.25	3.57
3.50	2.10	2.45	2.80	3.15	3.50	3.85
4.00	2.40	2.80	3.20	3.60	4.00	4.40
4.50	2.70	3.15	3.60	4.05	4.50	4.95
5.00	3.00	3.50	4.00	4.50	5.00	5.50
6.00	3.60	4.20	4.80	5.40	6.00	6.60

FOR PLUS SPHERE ABOVE FIGURES INDICATE BASE UP PRISM  
 " MINUS " " " " " " DOWN " "

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## Use This Chart for "Segs in 2" and Vertical Prismatic Effects

Use the following chart in conjunction with "Anisometric Rx's" published by Univis Corporation. As stated on page 5 of that treatise, your procedure as outlined therein remains exactly the same for computing the inequality of vertical prismatic effects at the reading depth, regardless of which of the charts are to be employed.

Following are given the vertical prismatic effects of a 1.00 diopter cylinder at all axes computed at 8, 9, 10 and 11 mm reading depths when segments are displaced nasalward each 2 mm.

8mm			9mm			10mm			11mm		
VERTICAL PRISM EFFECT			VERTICAL PRISM EFFECT			VERTICAL PRISM EFFECT			VERTICAL PRISM EFFECT		
Axis for O.D.	OF A 1.00 CYL	Axis for O.S.	Axis for O.D.	OF A 1.00 CYL	Axis for O.S.	Axis for O.D.	OF A 1.00 CYL	Axis for O.S.	Axis for O.D.	OF A 1.00 CYL	Axis for O.S.
0	300	190	0	300	190	0	1,000	190	0	1,100	190
5	311	173	5	311	173	5	1,010	173	5	1,090	173
10	319	150	10	319	150	10	1,021	150	10	1,101	150
15	326	125	15	326	125	15	1,033	125	15	1,113	125
20	331	100	20	331	100	20	1,047	100	20	1,127	100
25	334	75	25	334	75	25	1,062	75	25	1,142	75
30	337	50	30	337	50	30	1,077	50	30	1,157	50
35	339	25	35	339	25	35	1,093	25	35	1,173	25
40	340	0	40	340	0	40	1,110	0	40	1,190	0
45	341	25	45	341	25	45	1,127	25	45	1,207	25
50	342	50	50	342	50	50	1,145	50	50	1,225	50
55	343	75	55	343	75	55	1,163	75	55	1,243	75
60	344	100	60	344	100	60	1,182	100	60	1,262	100
65	345	125	65	345	125	65	1,201	125	65	1,281	125
70	346	150	70	346	150	70	1,221	150	70	1,301	150
75	347	173	75	347	173	75	1,241	173	75	1,321	173
80	348	190	80	348	190	80	1,262	190	80	1,342	190
85	349	190	85	349	190	85	1,283	190	85	1,363	190
90	350	190	90	350	190	90	1,305	190	90	1,385	190
95	351	190	95	351	190	95	1,327	190	95	1,407	190
100	352	190	100	352	190	100	1,350	190	100	1,430	190
105	353	190	105	353	190	105	1,373	190	105	1,453	190
110	354	190	110	354	190	110	1,397	190	110	1,477	190
115	355	190	115	355	190	115	1,421	190	115	1,501	190
120	356	190	120	356	190	120	1,446	190	120	1,526	190
125	357	190	125	357	190	125	1,471	190	125	1,551	190
130	358	190	130	358	190	130	1,497	190	130	1,577	190
135	359	190	135	359	190	135	1,523	190	135	1,603	190
140	360	190	140	360	190	140	1,550	190	140	1,630	190
145	361	190	145	361	190	145	1,577	190	145	1,657	190
150	362	190	150	362	190	150	1,605	190	150	1,685	190
155	363	190	155	363	190	155	1,633	190	155	1,713	190
160	364	190	160	364	190	160	1,662	190	160	1,742	190
165	365	190	165	365	190	165	1,691	190	165	1,771	190
170	366	190	170	366	190	170	1,721	190	170	1,801	190
175	367	190	175	367	190	175	1,751	190	175	1,831	190
180	368	190	180	368	190	180	1,782	190	180	1,862	190

Three figures denote: base UP for plus cylinders and DOWN for minus cylinders, except those figures printed in italics and indicated by \* which denote: base DOWN for plus and base UP for minus, specifically: axes 95 and 105 for the O. D. and axes 85 and 85 for the O. S.

You will note that the axis of the O. D. in this chart is always supplementary to the axis of the O. S., the two axes always totalling 180 degrees.

Determine the reading depth, and then multiply the power of the prescribed cylinder by the vertical prismatic effect for a 1.00 diopter cylinder at the prescribed axis.

For example:  
O. D. = 2.00 x 45  
O. S. = 3.00 x 45  
Reading depth 10 mm

In the 10 mm column, under AXIS FOR O. D., locate axis 45 and in the adjacent column you find 600. Multiply 600 by 2.00 and the vertical prismatic effect for the right lens is 1.20.

In the 10 mm column, under AXIS FOR O. S., axis 45, you find in the adjacent column 400. Multiply this 400 by 3.00 and the result is 1.20. Vertical prismatic effect for the left lens at a 10 mm reading depth.

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# **HORIZONTAL Prismatic Effects Chart for "Segs in 2"**

Use the following chart to learn what HORIZONTAL prismatic effect exists at the reading depth in any cylinder at any axis.

HORIZONTAL prismatic effects may be neutralized by prism segments or by extra seg displacement.

Following are given the HORIZONTAL prismatic effects of a 1.00 diopter cylinder, at all axes, computed at 8, 9, 10, and 11 mm reading depths when segments are displaced nasalward each 2 mm.

8mm			9mm			10mm			11mm		
Horizontal Prism Effect			Horizontal Prism Effect			Horizontal Prism Effect			Horizontal Prism Effect		
Axis for O.D.	OF A 1.00 CYL	Axis for O.S.	Axis for O.D.	OF A 1.00 CYL	Axis for O.S.	Axis for O.D.	OF A 1.00 CYL	Axis for O.S.	Axis for O.D.	OF A 1.00 CYL	Axis for O.S.
0	.000	180	0	.000	180	0	.000	180	0	.000	180
5	.011	175	5	.009	175	5	.008	175	5	.007	175
10	.022	170	10	.018	170	10	.017	170	10	.016	170
15	.033	165	15	.027	165	15	.026	165	15	.025	165
20	.044	160	20	.037	160	20	.036	160	20	.035	160
25	.055	155	25	.048	155	25	.047	155	25	.046	155
30	.066	150	30	.059	150	30	.058	150	30	.057	150
35	.077	145	35	.070	145	35	.069	145	35	.068	145
40	.088	140	40	.081	140	40	.080	140	40	.079	140
45	.099	135	45	.092	135	45	.091	135	45	.090	135
50	.110	130	50	.103	130	50	.102	130	50	.101	130
55	.121	125	55	.114	125	55	.113	125	55	.112	125
60	.132	120	60	.125	120	60	.124	120	60	.123	120
65	.143	115	65	.136	115	65	.135	115	65	.134	115
70	.154	110	70	.147	110	70	.146	110	70	.145	110
75	.165	105	75	.158	105	75	.157	105	75	.156	105
80	.176	100	80	.169	100	80	.168	100	80	.167	100
85	.187	95	85	.180	95	85	.179	95	85	.178	95
90	.198	90	90	.191	90	90	.190	90	90	.189	90
95	.209	85	95	.202	85	95	.201	85	95	.200	85
100	.220	80	100	.213	80	100	.212	80	100	.211	80
105	.231	75	105	.224	75	105	.223	75	105	.222	75
110	.242	70	110	.235	70	110	.234	70	110	.233	70
115	.253	65	115	.246	65	115	.245	65	115	.244	65
120	.264	60	120	.257	60	120	.256	60	120	.255	60
125	.275	55	125	.268	55	125	.267	55	125	.266	55
130	.286	50	130	.279	50	130	.278	50	130	.277	50
135	.297	45	135	.290	45	135	.289	45	135	.288	45
140	.308	40	140	.301	40	140	.300	40	140	.299	40
145	.319	35	145	.312	35	145	.311	35	145	.310	35
150	.330	30	150	.323	30	150	.322	30	150	.321	30
155	.341	25	155	.334	25	155	.333	25	155	.332	25
160	.352	20	160	.345	20	160	.344	20	160	.343	20
165	.363	15	165	.356	15	165	.355	15	165	.354	15
170	.374	10	170	.367	10	170	.366	10	170	.365	10
175	.385	5	175	.378	5	175	.377	5	175	.376	5
180	.396	0	180	.389	0	180	.388	0	180	.387	0

These figures denote  $\Delta$  base OUT for PLAIN cylinders and  $\Delta$  base IN for MINUS cylinders, except those figures printed in italics and indicated by \* which denote  $\Delta$  base IN for PLAIN and  $\Delta$  base OUT for MINUS cylinders, onto 180 through axis 175 for the O.D., and onto 5 through axis 15 for the O.S.

The horizontal prismatic effect of the sphere of an Rx is found simply by multiplying the power of the sphere by 2 (if centimeters, the 2 has no decimal movement). Such  $\Delta$  due to sphere must be combined with the  $\Delta$  due to cylinder to obtain TOTAL horizontal prismatic effect.

Multiply power of prescribed cylinder by the horizontal prismatic effect for a 1.00 diopter cylinder at prescribed axis.

For example: O.D. = 2.00  $\times$  45  
O.S. = 1.00  $\times$  45  
Reading depth 10 mm

In the 10 mm column, under AXIS FOR O.D. locate axis 45 and in the adjacent column find base OUT. Multiply .008 by 2.00 and the horizontal prismatic effect for the right lens is 1.60  $\Delta$  base OUT.

In the 10 mm column, under AXIS FOR O.S. axis 45, you find in the adjacent column .007. Multiply this .007 by 1.00 and the result for the left lens at a 10 mm reading depth is 1.00  $\Delta$  base IN.

Therefore, the NET HORIZONTAL prism is .60  $\Delta$  base OUT.

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VERTICAL PRISMATIC EFFECT CHART FOR CYLINDERS

Axis		at the selected READING DEPTH of $s =$ below optical center of distance lens.																		Axis	
to	CYLINDERS																			90°	180°
		0	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80			
0	.25	.37	.50	.62	.75	.87	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25	3.50	4.00	4.50	5.00	160°
5	.20	.30	.40	.50	.60	.70	.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.60	2.80	3.20	3.60	4.00	165°
10	.20	.30	.40	.50	.59	.69	.79	.99	1.19	1.39	1.59	1.78	1.98	2.18	2.38	2.58	2.78	3.17	3.57	3.97	175°
15	.19	.29	.39	.48	.58	.68	.78	.97	1.16	1.36	1.55	1.74	1.94	2.13	2.33	2.52	2.71	3.10	3.49	3.88	170°
20	.18	.26	.35	.44	.53	.62	.71	.88	1.06	1.24	1.41	1.59	1.77	1.94	2.12	2.30	2.47	2.83	3.18	3.53	160°
25	.16	.25	.33	.41	.49	.57	.66	.82	.99	1.15	1.31	1.46	1.64	1.81	1.97	2.14	2.30	2.63	2.96	3.28	155°
30	.15	.22	.30	.38	.45	.53	.60	.75	.90	1.05	1.20	1.35	1.50	1.65	1.80	1.95	2.10	2.40	2.72	3.00	150°
35	.13	.20	.27	.34	.40	.47	.54	.67	.81	.94	1.07	1.21	1.34	1.48	1.61	1.74	1.88	2.14	2.42	2.68	145°
40	.12	.18	.23	.29	.35	.41	.47	.59	.70	.82	.94	1.06	1.18	1.29	1.41	1.53	1.64	1.88	2.12	2.35	140°
45	.10	.15	.20	.25	.30	.35	.40	.50	.60	.70	.80	.90	1.00	1.10	1.20	1.30	1.40	1.60	1.80	2.00	135°
50	.08	.12	.17	.20	.25	.29	.33	.41	.50	.58	.66	.74	.82	.91	.99	1.07	1.16	1.32	1.48	1.65	130°
55	.07	.10	.13	.16	.20	.23	.26	.33	.40	.46	.53	.59	.66	.73	.79	.86	.92	1.06	1.19	1.32	125°
60	.05	.07	.10	.12	.15	.17	.20	.25	.30	.35	.40	.45	.50	.55	.60	.65	.70	.80	.90	1.00	120°
65	.04	.05	.07	.09	.11	.13	.14	.18	.21	.25	.29	.32	.36	.39	.43	.46	.50	.57	.64	.72	115°
70	.02	.04	.05	.06	.07	.08	.09	.12	.14	.16	.19	.21	.23	.26	.28	.30	.31	.36	.42	.47	110°
75	.01	.02	.03	.03	.04	.05	.05	.07	.08	.09	.11	.12	.13	.15	.16	.18	.19	.22	.24	.27	105°
80	.01	.01	.01	.01	.02	.02	.02	.03	.04	.04	.05	.05	.06	.07	.07	.08	.08	.10	.11	.12	100°
85	.00	.00	.00	.00	.00	.01	.01	.01	.01	.01	.01	.01	.02	.02	.02	.02	.02	.03	.03	.03	95°
90	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	90°

For PLUS CYLINDERS above figures indicate BASE UP PRISM.  
MINUS

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## VERTICAL PRISMATIC EFFECT CHART FOR CYLINDERS

at the selected READING DEPTH of 9 mm below optical center of distance lens.

Axis to 90°	CYLINDERS																				Axis 90° to		
	25	37	50	62	75	87	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25	3.50	4.00	4.50	5.00		5.60	6.00
0	.83	.34	.45	.56	.67	.79	.90	1.12	1.35	1.57	1.80	2.02	2.25	2.47	2.70	2.92	3.15	3.50	4.05	4.50	5.00	5.60	6.00
5	.22	.33	.45	.56	.66	.79	.89	1.12	1.34	1.55	1.79	2.00	2.23	2.45	2.66	2.90	3.12	3.37	4.02	4.46	4.91	5.36	
10	.22	.33	.44	.55	.65	.76	.87	1.09	1.31	1.53	1.75	1.96	2.18	2.40	2.62	2.84	3.05	3.29	3.93	4.36	4.80	5.25	
15	.21	.31	.42	.52	.63	.73	.84	1.05	1.26	1.47	1.68	1.89	2.10	2.31	2.52	2.73	2.94	3.16	3.78	4.20	4.65	5.10	
20	.20	.30	.40	.50	.60	.70	.79	.99	1.19	1.39	1.59	1.79	1.99	2.18	2.38	2.58	2.78	3.18	3.58	3.95	4.40	4.90	
25	.18	.28	.37	.46	.55	.65	.74	.92	1.11	1.29	1.48	1.66	1.85	2.03	2.22	2.40	2.59	2.96	3.33	3.70	4.15	4.65	
30	.17	.25	.34	.42	.51	.59	.68	.84	1.01	1.18	1.35	1.52	1.69	1.86	2.03	2.19	2.36	2.70	3.04	3.38	3.80	4.30	
35	.15	.23	.30	.38	.46	.53	.60	.75	.91	1.06	1.21	1.36	1.51	1.66	1.81	1.96	2.11	2.42	2.72	3.02	3.45	3.95	
40	.13	.20	.26	.33	.40	.46	.53	.65	.79	.92	1.06	1.19	1.32	1.45	1.58	1.72	1.85	2.11	2.38	2.64	3.00	3.40	
45	.11	.17	.22	.28	.34	.39	.45	.56	.67	.79	.90	1.01	1.12	1.24	1.35	1.46	1.57	1.80	2.02	2.25	2.55	2.90	
50	.09	.14	.19	.23	.28	.33	.37	.46	.56	.65	.74	.84	.93	1.02	1.12	1.21	1.30	1.49	1.67	1.86	2.10	2.40	
55	.07	.11	.15	.18	.22	.26	.30	.37	.44	.52	.59	.67	.74	.81	.89	.96	1.04	1.18	1.33	1.48	1.70	2.00	
60	.06	.08	.11	.14	.17	.20	.23	.28	.34	.39	.45	.51	.58	.62	.68	.73	.79	.90	1.01	1.13	1.30	1.60	
65	.04	.06	.08	.10	.12	.14	.16	.20	.24	.28	.32	.36	.40	.44	.48	.52	.56	.64	.72	.80	1.00	1.20	
70	.03	.04	.05	.07	.08	.09	.11	.13	.16	.18	.21	.24	.26	.29	.32	.34	.37	.42	.47	.53	1.00	1.20	
75	.01	.02	.03	.04	.05	.06	.08	.09	.11	.12	.14	.15	.17	.18	.20	.21	.24	.27	.30	.35	1.00	1.20	
80	.01	.01	.01	.02	.02	.02	.03	.04	.05	.05	.06	.07	.07	.08	.09	.11	.12	.14	.15	.18	1.00	1.20	
85	.00	.00	.00	.00	.01	.01	.01	.01	.01	.01	.01	.02	.02	.02	.02	.02	.03	.03	.03	.03	1.00	1.20	
90	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	1.00	1.20	

For PLUG Cylinders above figures indicate EAST UP POSITION.

For PLUS cylinders above figures indicate BASE UP PRISM.  
DOSE

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# 450 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

## VERTICAL PRISMATIC EFFECT CHART FOR CYLINDERS

at the selected reading depth of 10 mm below optical center of distance lens.

Axis to	CYLINDERS																Axis from
	25	37	50	62	75	87	1.00	1.12	1.25	1.37	1.50	1.62	1.75	1.87	2.00	2.12	
0	25	37	50	62	75	87	1.00	1.12	1.25	1.37	1.50	1.62	1.75	1.87	2.00	2.12	180
5	25	37	50	62	74	86	.99	1.11	1.24	1.39	1.54	1.68	1.82	1.96	2.10	2.25	175
10	24	36	48	60	72	84	.97	1.10	1.23	1.38	1.53	1.67	1.81	1.95	2.09	2.24	170
15	23	34	47	59	70	81	.93	1.17	1.31	1.46	1.60	1.74	1.88	2.02	2.16	2.30	165
20	22	33	44	55	66	77	.88	1.10	1.25	1.40	1.55	1.69	1.83	1.97	2.11	2.25	160
25	20	30	41	51	62	72	.82	1.03	1.18	1.33	1.48	1.62	1.76	1.90	2.04	2.18	155
30	19	28	37	46	56	65	.75	.94	1.12	1.31	1.50	1.69	1.87	2.06	2.25	2.44	150
35	17	25	34	43	52	61	.67	.84	1.01	1.17	1.34	1.51	1.68	1.85	2.01	2.18	145
40	15	22	29	36	44	51	.59	.73	.88	1.03	1.17	1.32	1.47	1.61	1.76	1.91	140
45	12	18	25	31	37	43	.50	.64	.75	.87	1.00	1.12	1.25	1.37	1.50	1.62	135
50	10	15	21	26	31	36	.41	.54	.64	.74	.83	.93	1.03	1.13	1.24	1.34	130
55	08	12	16	20	25	29	.33	.45	.54	.62	.70	.78	.87	.95	1.07	1.15	125
60	06	09	12	15	19	22	.25	.37	.44	.50	.56	.62	.69	.75	.81	.87	120
65	04	07	09	11	13	15	.18	.28	.34	.39	.44	.49	.54	.59	.63	.67	115
70	03	04	06	07	09	10	.12	.20	.24	.28	.32	.36	.40	.44	.47	.51	110
75	02	02	03	04	05	06	.07	.14	.17	.20	.23	.26	.29	.32	.35	.37	105
80	01	01	02	03	04	05	.03	.08	.10	.12	.14	.16	.18	.20	.22	.23	100
85	00	00	00	00	01	01	.01	.01	.01	.01	.01	.01	.01	.01	.01	.01	95
90	00	00	00	00	00	00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	90

For plus cylinders above figures indicate prism direction DOWN.

Page 16

VERTICAL PRISMATIC EFFECT CHART FOR CYLINDERS  
at the selected READING DEPTH of 11 mm below optical center of distance lens.

AXIS 90°	CYLINDERS -																AXIS 180°
	0	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	
0	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	.15	90
5	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	180
10	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	175
15	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	170
20	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	165
25	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	160
30	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	155
35	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	150
40	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	145
45	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	140
50	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	135
55	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	130
60	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	125
65	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	120
70	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	115
75	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	110
80	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	105
85	.00	.00	.01	.02	.03	.04	.05	.06	.07	.08	.09	.10	.11	.12	.13	.14	100
90	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	90

For PLUS cylinders above figures indicate prism diopters base UP.  
MINUS DOWN.

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# An ANALYSIS of BIFOCAL Prescriptions

DISTANCE RX IN 90th MERIDIAN												Over +5.00	*Any Minus
Plano	+1.00	+1.50	+2.00	+2.50	+3.00	+3.50	+4.00						
+1.00	D	D	R	R	R	R	R	R	R	R	R	D	
+1.50	D	D	R	R	R	R	R	R	R	R	R	D	
+2.00	D	D	D	R	R	R	R	R	R	R	R	D	
+2.50	D	D	D	D	D	R	R	R	R	R	R	D	
+3.00	D	D	D	D	D	D	R	R	R	R	R	D	
+3.50	D	D	D	D	D	D	D	D	D	D	D	D	

\*Either style D, Compressed No. "0", or Prism Segment may be used on any minus prescription.

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# An ANALYSIS of BIFOCAL Prescriptions

By V. H. HANCOCK

It is true that all bifocals possess three optical centers, i. e.:

1. Optical center of distance portion;
2. Optical center of segment alone; and
3. Resultant optical center of combined distance and segment (also known as reading-field-center).

One school of thought, dating back to Prentice in his published work of 1900, has felt that the location of the resultant optical center in a bifocal should coincide with the reading depth... a point 8 or 10 mm below distance optical center.

Those refractionists today point out that in

Univis, and only in Univis, can they locate the resultant optical centers so exactly where they desire.

Plus, they point out, the admitted superior efficiency of Univis' absolutely straight-top segment!

Plus—again, the identified Univis segment design!

The writer here and now wishes to make it plain that he is not an advocate of "resultant optical centering" but, believing that everyone is entitled to his or her own opinion, the writer will seek no quarrel with those of opposite mind.

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Page 2

**An ANALYSIS of BIFOCAL Prescriptions**

About every ten years since 1900, attempts have been made to chart this resultant optical centering idea. Such past attempts have been confined to the use of some two, three, or four segment styles, most of which are of the round or semi-circular variety and easily copied in nonarex or wofex.

Because, unfortunately, a 20 mm round nonarex seg has the same resultant optical center as the same Rx in a 20 mm fine quality round seg.

Whereas the Univis straight-top with the same resultant optical center identifies quality.

Univis lenses are made and sold only in one quality... the finest quality!

*And plus the fact that the patient can read 4 mm closer to the top of a Univis segment than with a 20 mm round segment.*

Since 1926 Univis regularly has supplied straight-top segments to those refractionists of the "resultant optical centering" turn of mind.

For those refractionists who do not care to go into great technical detail but who wish a quick, handy reference chart to assist in analyzing their bifocal prescriptions we re-print the chart shown on next page:

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(Page 3)

## DISTANCE RX IN 90th MERIDIAN

READING ADDITION	Plano	+1.00	+1.50	+2.00	+2.50	+3.00	+3.50	+4.00	Over +5.00	*Any Minus
+1.00	D	D	D	R	R	R	R	R	R	D
+1.50	D	D	D	R	R	R	R	R	R	D
+2.00	D	D	D	D	R	R	R	R	R	D
+2.50	D	D	D	D	D	D	R	R	R	D
+3.00	D	D	D	D	D	D	D	R	R	D
+3.50	D	D	D	D	D	D	D	D	R	D

\*Either style D, Compensated No. "0", or Prism Segment may be used on any minus prescription.

EXAMPLE: Distance Rx +2.00, Add +2.00. At the top of the chart, in the DISTANCE RX IN THE 90th MERIDIAN, locate the +2.00 column. Run down the +2.00 column until you intersect the ADD +2.00 row. Thus you find that Univis D is indicated in that prescription.

(If your Rx has a cylinder at an oblique axis, turn to Page 7 to determine the power of your cylinder in the 90th meridian; then combine with your spherical power and you will have your DISTANCE RX IN 90th MERIDIAN).

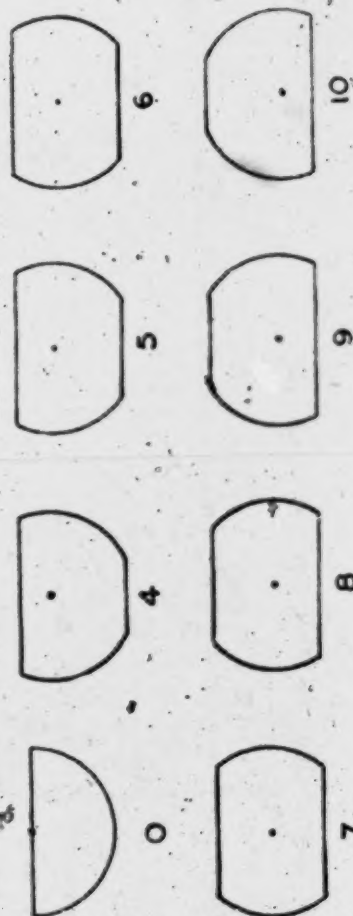
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(Page 4)

Those "resultant optical centering" devotees of ANALYSIS OF BIFOCAL PRESCRIPTIONS, who have gone in for deeper study of each individual prescription, have used the following chart for many years. It is again being printed with explanatory notes, albeit the writer's own opinion is that any presbyope needing O. U. +5.00 for distance must have worn O. U. +5.00 for constant wear many years prior to presbyopia and suffered no ill effects because of reading through prisms bases up... as long as the vertical prismatic effect was equal in each eye!

### COMPENSATED SEGMENTS

The numbers also indicate in millimeters the position of the optical centers of segments in relation to the top of the segments.



But some believe otherwise, so here follows the more complex chart and illustrations of Compensated Segments Nos. 0 to 10. This chart is based upon their acceptance as to location of the resultant optical center in relation to the reading depth or reading level in the round, the semi-circular, and the modern segment bifocals. Bearing this in mind, users of the following chart insist that it affords a far more exacting analysis of bifocal prescriptions than any chart prepared before or since.

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## DISTANCE RX IN 90th MERIDIAN

Plano	1.00	1.50	2.00	2.50	3.00	3.50	4.00	Over -5.00	Any Minus
1.00	=5	=7	=8	=9	=9	=10	=10	=10	
1.50	=5	=7	=7	=8	=8	=9	=9	=10	
2.00	=5	=6	=7	=7	=7	=8	=8	=9	
2.50	=5	=5	=6	=7	=7	=7	=8	=8	
3.00	=5	=5	=5	=6	=7	=7	=7	<del>=8</del>	
3.50	=5	=5	=5	=6	=6	=7	=7	=7	

READING ADDITION

MAY USE #5, #4, OR #0

Where No 5 is indicated Style "D" also serves. Where No 7 is indicated Style "R" also serves.  
On MINUS PRESCRIPTIONS use either No. 5, No. 4 or No. 0.

EXAMPLE: Distance Rx = 1.50. Add = 2.50. At the top of the chart in the DISTANCE RX in 90th MERIDIAN locate the 1.50 column. Run down the 1.50 column until you intersect the horizontal Add 2.50 row. Thus you find that Univis Segment No. 5 is indicated in that prescription.

If your Rx has a cylinder at an oblique axis, turn to Page 7 to determine the power of your cylinder in the 90th meridian; then combine with your spherical power and you will have your DISTANCE RX IN 90th MERIDIAN.)

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## An ANALYSIS of BIFOCAL Prescriptions

Thus is concluded, the writer feels, "the day in court" for the resultant optical centering enthusiasts who have been writing to ask why we haven't publicised the *modus operandi* by which they have analyzed bifocal prescriptions for, lo, these many years.

Some of you will recall that gray-backed brochure by Emerson, published by The Univis Lens Company eleven years ago, which dealt in detail with analysis of bifocal prescriptions. Now, as then, Univis offers the most efficient, most complete method of positioning the resultant optical center where you want it . . . if you want it.

As for the writer, he still is of the same opinion as was that physicist who in 1923 wrote, "If centering of the segments is considered necessary in all cases, then it follows that single vision lenses can never be used except through their optical centers . . . a conclusion illogical and absurd."

Thus, the writer still likes the Univis D or the regular Univis R for any prescription, plus or minus. *But equalize those anisometropic Rx's!*

Use regularly the Univis Complete Multifocal Service. A fine quality, identified type for every individual requirement!

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(Page 7)

CYLINDER PRESCRIBED

AXIS PRESCRIBED

	.25	.37	.50	.62	.75	.87	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25	3.50	4.00	4.50	5.00
0	.25	.37	.50	.62	.75	.87	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25	3.50	4.00	4.50	5.00
5	.25	.37	.50	.62	.74	.86	.99	1.24	1.49	1.74	1.98	2.23	2.48	2.73	2.98	3.22	3.47	3.97	4.46	4.95
10	.24	.36	.48	.60	.73	.84	.97	1.21	1.46	1.70	1.94	2.18	2.42	2.67	2.91	3.15	3.40	3.88	4.36	4.85
15	.23	.34	.47	.58	.70	.81	.93	1.17	1.40	1.63	1.87	2.10	2.33	2.57	2.80	3.03	3.27	3.73	4.20	4.66
20	.22	.33	.44	.55	.66	.77	.88	1.10	1.33	1.55	1.77	1.99	2.21	2.43	2.65	2.87	3.09	3.54	3.98	4.42
25	.20	.30	.41	.51	.62	.71	.82	1.03	1.23	1.44	1.64	1.85	2.05	2.26	2.46	2.67	2.87	3.28	3.70	4.10
30	.19	.28	.37	.46	.56	.65	.75	.94	1.12	1.31	1.50	1.69	1.87	2.06	2.25	2.44	2.62	3.00	3.38	3.75
35	.17	.25	.34	.42	.50	.58	.67	.84	1.01	1.17	1.34	1.51	1.68	1.85	2.01	2.18	2.35	2.68	3.02	3.35
40	.15	.22	.29	.36	.44	.51	.59	.73	.88	1.03	1.17	1.32	1.47	1.61	1.76	1.91	2.05	2.35	2.64	2.93
45	.12	.18	.25	.31	.37	.43	.50	.62	.75	.87	1.00	1.12	1.25	1.37	1.50	1.62	1.75	2.00	2.25	2.50
50	.10	.15	.21	.26	.31	.36	.41	.52	.62	.72	.83	.93	1.03	1.13	1.24	1.34	1.45	1.65	1.85	2.06
55	.08	.12	.16	.20	.25	.29	.33	.41	.50	.58	.66	.74	.82	.91	.99	1.07	1.15	1.32	1.48	1.65
60	.06	.09	.12	.15	.19	.22	.25	.31	.37	.44	.50	.56	.62	.69	.75	.81	.87	1.00	1.12	1.25
65	.04	.07	.09	.11	.13	.15	.18	.22	.27	.31	.36	.40	.45	.49	.54	.58	.63	.72	.80	.90
70	.03	.04	.06	.07	.09	.10	.12	.15	.18	.20	.23	.26	.29	.32	.35	.38	.41	.47	.53	.58
75	.02	.02	.03	.04	.05	.06	.07	.08	.10	.12	.13	.15	.17	.18	.20	.22	.23	.27	.30	.33
80	.01	.01	.02	.02	.02	.03	.03	.04	.04	.05	.06	.07	.07	.08	.09	.10	.10	.12	.13	.15
85	.00	.00	.00	.00	.01	.01	.01	.01	.01	.01	.02	.02	.02	.02	.02	.03	.03	.03	.04	.04
90	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00

THE ABOVE FIGURES SHOW THE POWER OF YOUR CYLINDER IN THE 90th MERIDIAN

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AXIS PRESCRIBED



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★ ★ ★ ★

PRECISION

MANUFACTURE

employing

Newton's Ring Test

★ ★ ★ ★

★ ★ ★ ★

An identified

type for every

individual

requirement

★ ★ ★ ★

# THE UNIVIS BULLETIN

September-October  
1948

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DAYTON, OHIO

Edited by  
L. V. Browne

## This New Univis Demonstrator Will Help You Make More Profitable Bifocal Sales

Read the Details of Its Use—How It Proves to Patients the Outstanding Advantage of Univis Design. Shortens Explanation and Makes Sales Sure.

Available to Licensees at Nominal Charge of \$2.50 Through Your Distributor.

Here's a new Demonstrator that makes the entire explanation of the KRYPTON system.

It's easy to use. The demonstrator is in a convenient, flat, fold-out case. It's the perfect size for the patient's hand and can be used in the office or at home.

The demonstrator has double frames. The center of each frame is covered with a clear plastic sheet. The outer frame is held in place by two black sticks. The clear sheet and position of UNIVIS STYLE 35 are shown.

The second pair is mounted in a light metal case in front of the first pair and is in a similar position. This pair has black sticks in the shape, size and position of KRYPTON system.

The outer frame is permanently attached to the double frame of the top spring clip. At the sides hold the outer frame in contact position and slight pressure, prevent it from slipping in horizontal position.

When both pairs are vertical the patient is looking over the top of KRYPTON segment. When the frame is up, the patient is looking over Univis segment.

### HOW YOU USE IT

While using the demonstrator to prove the gain in distance vision, put over the patient who will have some eye, even and more convincing, reading range with Univis.

Now, hold the double frame. Ask the patient to look at the top of the KRYPTON segment. The patient will see the top of the KRYPTON segment. The patient will see the top of the KRYPTON segment. The patient will see the top of the KRYPTON segment.

Next, hold the demonstrator in position. Ask the patient to hold his head in the same position and look at the KRYPTON segment. The patient will see the top of the KRYPTON segment. The patient will see the top of the KRYPTON segment. The patient will see the top of the KRYPTON segment.



NEVILLE DOUBLE FRAME DEMONSTRATOR

Photographs above illustrate use of the double frame—at left, both frames down, the patient looking over KRYPTON segment sticks—at right, the outer frame flipped up and patient looking over Univis segment sticks.

distance bifocal. It gets to the eye when going up and down sticks. It causes eyes to move the reading boards of their own eye sticks. In fact, it is the basis for nearly all bifocal troubles and is absolutely unnecessary. Now that the widest portion of the KRYPTON bifocal is away down at the bottom. In use if the eye has to jump from here (looking to center of distance lens).

Now in this new bifocal (KRYPTON) the widest portion of the segment is at the top. Your eyes do not have to jump. They simply step over the straight line with practically no effort at all. The portion of the old style bifocal which caused so much trouble has been removed. This bifocal is 50 much easier to wear, much more comfortable. Please try on this frame. It allows you to see the difference between the two bifocals.

For the demonstrator, on the patient with both pairs of lenses before the eye. Have him stand. Ask him to hold his head in the same position and look at the KRYPTON segment. The patient will see the top of the KRYPTON segment. The patient will see the top of the KRYPTON segment. The patient will see the top of the KRYPTON segment.

Then, with the patient maintaining same head position, release the spring and the frame pair rises to horizontal position. Now the patient will be looking over the UNIVIS sticks. He will see those stick several feet closer to him than he could with the KRYPTON—an important gain.

Flip the KRYPTON frame down again and have him look at something more distant, say across the street. Now flip it up again to show how much MORE he will see over the UNIVIS segment, and how easily without the annoying interference that is experienced with the KRYPTON stick top.

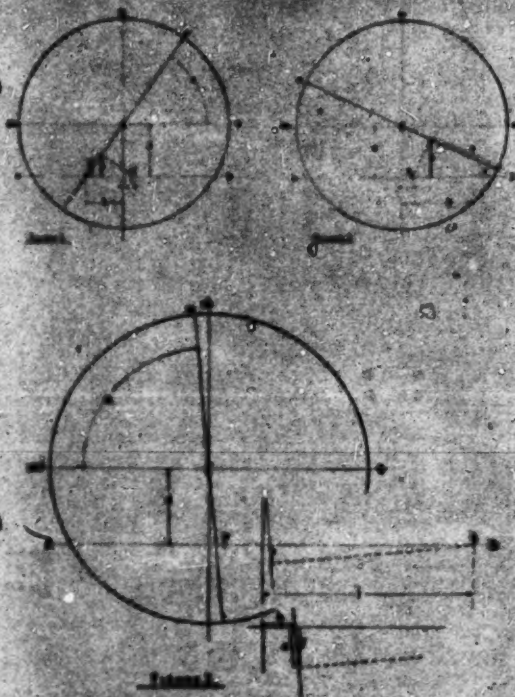
Emphasize that this second great gain of distance vision means also gain in near vision efficiency and comfort, because the widest part of the UNIVIS segment is at the top where it is most useful.

Now of this demonstrator does not take time to SAVE time. The explanation and demonstration go right along together. The patient who might otherwise want to buy KRYPTON or contact

(Continued on next page)

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### What's Too High?

What is the height of the object? The height of the object is the distance from the base of the object to the top of the object. The height of the object is the distance from the base of the object to the top of the object. The height of the object is the distance from the base of the object to the top of the object.

### Telling Them

Telling them the height of the object is the distance from the base of the object to the top of the object. Telling them the height of the object is the distance from the base of the object to the top of the object. Telling them the height of the object is the distance from the base of the object to the top of the object.

### Conclusion

The conclusion is that the height of the object is the distance from the base of the object to the top of the object. The conclusion is that the height of the object is the distance from the base of the object to the top of the object. The conclusion is that the height of the object is the distance from the base of the object to the top of the object.

### Measurement

Measurement of the height of the object is the distance from the base of the object to the top of the object. Measurement of the height of the object is the distance from the base of the object to the top of the object. Measurement of the height of the object is the distance from the base of the object to the top of the object.

### Practice

Practice measuring the height of the object. Practice measuring the height of the object. Practice measuring the height of the object. Practice measuring the height of the object. Practice measuring the height of the object.





# THE UNIVIS BULLETIN

June  
1937

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THE UNIVIS CORPORATION  
ASTOR OHIO

Edited by  
L. V. Brown

**T**HE Univis Lensman has at his command, in Univis, the finest bifocals made; the most complete multifocal lens service; and most thorough protection... The more Univis you use the greater the benefits you gain from your opportunity... It pays to use Univis in every possible case.

## The Bifocal of Choice in Heavy Plus Corrections?

## Here's An Unusual Design of Lens



Mr. Everett Hawkins of the Sales Branch of Quinlan-Duffell Optical Co., Toledo, Indiana, is wearing the above unusual design of lens and has kindly consented to its reproduction here.

This design (a 7 shape) is particularly adapted to the man with a rather large head, but with an average F. D., and with heavy, overhanging brows and prominent cheeks.

In using the Q-D Special, Mr. Hawkins recommends a low "wrap-around" type of pad bridge fitted just as high as possible on the nose. Then, where ordinarily a 20 or a 24 mm bridge would be selected, a 26 mm bridge can be used. Or a 28 segment of a 24 or 26. Placing this smaller bridge so much higher on the nose, the lenses must be drilled 4 or 5 mm higher than ordinarily in a 27-28 Q-D Special. For instance, the nasal holes would be drilled 20 mm high.

It is suggested that this design be used a few times in single vision lenses first before trying it with bifocals, as there appears to be a certain knack required for its proper fitting.

The back down portion of the semi-circular eye disturbed that brain pattern, producing some real discomfort; the motion was, having no prism, did not create any disturbance. But what that brain pattern, but restricted the eye to function just as comfortably and as naturally as they did with the - 7.00 Jov near work before Presbyopia set in.

The writer has proven this to be a fact many times in cases of high Hyperopia and has yet to find discomfort produced by prescribing Univis Bifocals in these Hyperopic cases.

One answer to select that semi-circular eye shape should be prescribed where the distance correction is strong plus, is positively not correct and cannot be proven in actual practice.

A. W. BENSON, O. D.

## "A COPIED PRAYER—You May Like It Too."

"Teach me that 30 minute, make an hour, 15 minute make a pound, and 100 cents a dollar. Help me to live so that I can be down at night with a clear conscience and untroubled by the fears of those to whom I may have brought pain. Grant that I may care my soul better on the square, and in earning it I would do unto others as I would have them do unto me. Indifference to the plight of talented money. Blind me to the faults of other fellows and reveal to me my own. Keep me young enough to laugh with little children and sympathetic to all to be considerate of old age. And when comes the day of departing shades, make the ceremony short and the spirit simple. Here lies a man."

## "What a Difference"

"I tried a pair of other make bifocals for a few days and when I switched over to your Univis, what a difference! I could see further than this, but I didn't want to sound like a patent medicine testimonial."—Alfred Staniland, Fox & Staniland, Inc., Buffalo, N. Y.

## Personal Test

Until he became presbyopic himself, L. F. Kasper, O.D., Cleveland, prescribed bifocals with curved top segments. When he went to bifocals himself he tried patiently but could not wear them with comfort. So he tried Univis—and now wears all the bifocals he prescribes are Univis.

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# Here's How!

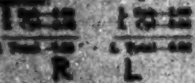
BY VINCE RUTY HANCOCK

This is one of a series of articles on Fitting by Mr. Hancock, writing from his own experience as a dispenser and from observation as a training representative of The United Lens Company.

The following explanation of the use of the artificially created vertical insubstance is given in the May BULLETIN. It is a simplified explanation of the method of fitting the eye to the eye.

Ex. 11.  $R = 1.00 - 1.00 \times 1.00$   
 $L = 1.00 - 1.00 \times 1.00$

ADD 1.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00



Artificially created vertical insubstance. This is a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

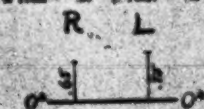
Ex. 12.  $R = 1.00 - 1.00 \times 1.00$   
 $L = 1.00 - 1.00 \times 1.00$   
 ADD 1.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00



Ex. 11.

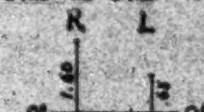
Artificially created vertical insubstance. This is a vertical line of 1.00 in. length.

Ex. 12.  $R = 1.00 - 1.00 \times 1.00$   
 $L = 1.00 - 1.00 \times 1.00$   
 ADD 1.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00



Ex. 12. Artificially created vertical insubstance. This is a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

Ex. 13.  $R = 1.00 - 1.00 \times 1.00$   
 $L = 1.00 - 1.00 \times 1.00$   
 ADD 1.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00



Ex. 13. Artificially created vertical insubstance. This is a vertical line of 1.00 in. length.

Ex. 14.  $R = 1.00 - 1.00 \times 1.00$   
 $L = 1.00 - 1.00 \times 1.00$   
 ADD 1.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00  
 1.00 - 1.00 = 0.00

Ex. 14.



Artificially created vertical insubstance. This is a vertical line of 1.00 in. length.

The procedure in Ex. 14 is identical to the procedure in Ex. 12. It is used to create a vertical insubstance for the eye to see.

Let us call your attention now to the fact that in Ex. 12 and Ex. 13, the vertical insubstance is created by a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

What is the purpose of this vertical insubstance?

It is to create a vertical insubstance for the eye to see. It is used to create a vertical insubstance for the eye to see.

Furthermore, the vertical insubstance is created by a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

Therefore, the vertical insubstance is created by a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

It is created by a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

When the vertical insubstance is created by a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

To summarize, the vertical insubstance is created by a vertical line of 1.00 in. length. It is used to create a vertical insubstance for the eye to see.

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verts. The effect is quite the same as if, every time a perfectly balanced equilibrium of forces is reached, he would try to read through one prism prism base up over one eye and the base down over the other eye. Naturally, this doesn't work. And yet it illustrates the importance of the balance. If the balance is corrected, this would have been exactly the effect over the years, but not the R's been compensated to neutralize the artificial vertical imbalance induced at the reading depth.

In some R's the artificially created vertical imbalance is so great that compensation results. The brain forces the eyes vertical from one eye and all the reading is done with the other eye. In such work cases of compensation, there is such a vertical imbalance has been induced at the reading depth over a period of years, some refractarians seem to be able to compensate, stating that they prefer to keep changing eyes. In such cases where one eye compensates at reading, the brain says, "You're being good, I should thank, however, that if you could gain the confidence of such a patient, and if the patient could afford the cost, and the cost, you certainly should compensate and balance the vertical prismatic effect at the reading depth in the future, and you should train the patient to read headless. That's driving for perfection, of course, but R's have said that no lens has yet been made which might be termed too good for the human eye, so let's have a little standing now and then.

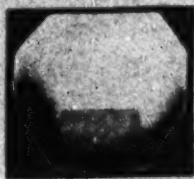
Then there's the person whom R's, over a long period of years, have compensated an artificial vertical imbalance at the reading depth and, over that long period of years this patient naturally has overcome the artificial vertical imbalance by developing a compensating hyperopia until this acquired hyperopia is neutralized over when looking straight ahead through the distance optical centers. Again, perfection would call for an automatic balancing of the vertical prismatic effect at the reading depth in the future and these eye training procedures until the acquired hyperopia disappeared. But we must leave judgment.

If you derive the perfection in every R's, then you will compensate every one of your R's for artificial imbalance at the reading depth in the future, corresponding to the real human eye's vision.

It is in mind that two would believe vertical prismatic effects at the reading depth that it matters not whether both eyes compensate an equal amount of vertical prism base up, or whether both eyes compensate an equal amount base down, but in both eyes are induced at the reading depth. No compensation is necessary of these facts through the short distance, shows the vertical effect of both eyes equals below the "zero line". And in compensation is necessary if it shows both eyes equal above the "zero line".

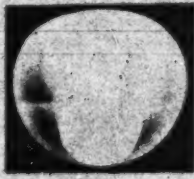
But if the prismatic effect of the reading depth is not equal to either or less than to the other eye, then compensation is indicated.

And I think provide the most convenient system of compensating imbalance by making segments three different powers. COMPENSATED SEGMENTS, SLAB-OFF PRISM, and PRISM CONTROLLED SEGMENTS.



Compensated

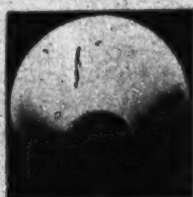
Vertical prismatic effect at the reading depth results in imbalance up to about 1.50 D may be compensated by variation in length of top and bottom lines of the segments which automatically controls the positioning of the optical centers of the segments themselves. This is an entirely correct method of controlling imbalance without increasing the weight or thickness of the lens and without the resultant unsightly appearance of ordinary prism segments. The segment lines are very thin and inconspicuous in the wear. Compensated segments 4 to 10 are illustrated at bottom of this page.



Slab-Off Prism

Where vertical prismatic effect at the reading depth results in an imbalance of around 1.50 D or more, this method is recommended most highly. The compensating prism is placed over the entire lower field by a grinding process. No rim, consider and unightly thin prism base, absolutely accurate in prism power, and by far the least objectionable of any means to the wearer. The SLAB-OFF PRISM has the added advantage of affording balanced vision should the wearer look at the ground through the distance portion of the side of the seg-

ments. Numerous cases on record with compensating prism powers up to 5.00 D giving excellent results.



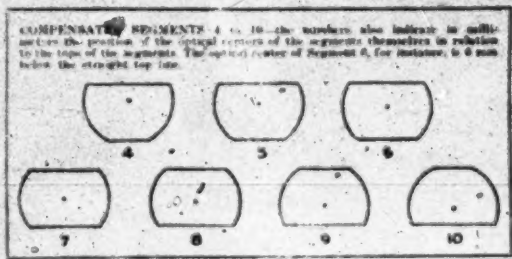
Prism Controlled

Slab-off compensated vertical prism, prism power from .50 D to 5.00 D can be obtained at any angle. Prism .50 D to 2.00 D the diameter of the seg. is 18 mm. For 3.00 D a 16 mm seg. is used. The edges of this SLAB-OFF PRISM CONTROLLED segment are left gray and non-reflective.

Note: Rx No. 10, 11, 12, 13 and 14 would be best fitted with imbalance entirely corrected by use of the following Univis Compensated segments:

- Rx No. 10
  - R. E. No. 4 shape; L. E. No. 4 shape.
  - Rx No. 11
  - R. E. No. 5 shape; L. E. No. 4 shape.
  - Rx No. 12
  - R. E. No. 5 shape; L. E. No. 7 shape.
  - Rx No. 13
  - R. E. No. 2 shape; L. E. No. 4 shape.
  - Rx No. 14
  - R. E. No. 4 shape; L. E. No. 10 shape.
- to correct LMD of imbalance; if it is desired to correct the entire LMD, the Slab-Off Prism would be recommended for the right eye and the regular D segment Univis for left eye.

(To be continued)



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### Fitted with Univis and Regains Job

A carpenter in Bridge, N. J., lost his job because he could not see. He was fitted with Univis lenses and now he is back at work. He says: "I was blind and I was told that I was blind. But now I can see and I can work."

Univis lenses are made of a special material and are fitted to the eye. They are made in New York City and are sold by the Univis Lens Co., Inc. in New York City.

### Quite Perfect

"I have tried many other lenses but Univis is the only one that is quite perfect. I can see and I can work. I am very happy with Univis lenses."

## A Quarantine Station Is Needed

New York, N. Y.

There is a serious need for a quarantine station in New York City. The city is a great port and many ships come here. Some of these ships have people who are sick and need to be quarantined.

At present, the city has no place where these people can be quarantined. They are put in hotels and this is not good for them. They need a place where they can be taken care of and where they can get the help they need.

An example of this is the case of a man who came from a ship. He was sick and had to be put in a hotel. He was not able to get the help he needed and he died.

A quarantine station would be a place where these people can be taken care of. It would be a place where they can get the help they need and where they can be kept safe from the rest of the city.

There is a need for a quarantine station in New York City. The city is a great port and many ships come here. Some of these ships have people who are sick and need to be quarantined.

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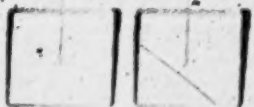
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The diagram shows a rectangular area divided into three sections. The left section is labeled 'A', the middle section is labeled 'B', and the right section is labeled 'C'. This diagram is part of a larger illustration showing the layout of a quarantine station.

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UNIVIS Lenses B and D have their optical centers controlled 1 millimeter from the top edge of segment and extend no more than 1/2 inch from the top point.

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# THE UNIVIS BULLETIN

January  
1936 - Copyrighted

THE UNIVIS CORPORATION  
DAYTON OHIO

Edited by  
L. V. Brown

## Greetings of the Season with Deep Appreciation:

WHATEVER else gives you pleasure in viewing the closing year in retrospect, may we remind you of one great reason for rejoicing that may not have occurred to you because it has become incidental to your every-day life. We rely to your part in providing better vision for people. So vital a contribution to the welfare and enjoyment of those served is a service equalled only by agencies that conserve life itself.

All who have participated, whether it be by examining, prescribing, grinding, fitting or any other phase, can and should have a feeling of deep satisfaction in having contributed best efforts to the people who, directly or indirectly, enlisted your services to help their vision.

We trust and wish the New Year will yield much happiness and success for you. In behalf of the Univis company, I express warm appreciation of the splendid co-operation we have received.

Sincerely yours,

*Wm. J. Vandenberg*  
President

## Happy New Year

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## Looking Forward with Confidence at the Close of an Eventful Year



By J. R. SILVERMAN  
General Manager

A review of the past year's activities of the Univis Lens Co. offers much of which we are both proud and grateful.

There were over 30,000 more pairs of Univis sold in 1935 than in 1934, and 1934 was a record year. This can only be interpreted as a genuine recognition of the quality and superiority of our Univis complete bifocal service, and a high appreciation of the protective value of our licensing system to the legitimate dealer, both wholesale and retail. Such excellent response to our constructive efforts can only be met with a greater determination to continue offering the finest in multifocal service, distributed under a protected system, which guarantees legitimate profit, consistent with good service, to both wholesaler and retailer alike.

As we see it, the legitimate dealer has but one minor problem—to keep out of competition with the ruthless, unscrupulous merchandiser of cut-rate spectacles. A legitimate refractonist thinking in terms of vision service cannot hope to compete with the man whose paramount thought is "sell a pair of specs and get the money." Trying to play this man's game is like trying to break the bank at Monte Carlo—it can't be done. Eliminate this competition—use identified merchandise that you know is not sold to the chisel and on which you know the retail price is the same regardless of where purchased.

1935 saw the erecting and equipping of what we feel is the most modern and efficient multifocal lens factory in existence. We point with pride to:

our 66 R. electrical fusing furnace with a heat control within 2° Fahrenheit

the precision machinery of exclusive design which guarantees a perfect optical surface on both countersink and segment, perfect to the point of passing the Newton's Ring Test for accuracy;

our ability to give steady employment to an additional 125 people this year; development of additional aids to vision, awaiting perfection of details for formal introduction.

All of these achievements are made possible only by the splendid support we have received from our licensees—and to you we say we are truly grateful, and efforts during the coming year will we hope justify your confidence and merit a continuance of your valiant support.

—J. R. Silverman

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Milton T. Silverman

Tenness (Giff), or something. About a year ago I was receiving the open spaces of the Middle West—now as a daily ruble of crowded highways I have a sort of brotherly sympathy for the busy sardine.

To you whom I formerly called on in the West—I miss you. Thanks for all your kindnesses.

To you of the East—appreciation of your hospitality and helpful co-operation.

To all of you healthful happy men—and the wish that the new year will be the most successful you ever had.

—Milton T. Silverman.

Greetings from--

## UNIVIS FIELD MANAGERS

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R. E. Merville

Most cherished among the gifts bestowed by the passing year are the memories of the many courtesies extended to me by the Univis licensees of my territory—the Western Division.

So most sincerely

I wish you a

Happy New Year!

—R. E. Merville.

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V. H. Hanesek

For an end-of-the-year "Howdy" there's so much I would say to them whom it's been my pleasure to meet during '33 that the space will scarcely suffice.

I've enjoyed every minute of my association with you all. Many a good idea you've given me during my interviews. For your courtesies and co-operation I thank you.

May yours be Happy Holidays, but I hope you won't need to reach for the "hooray" on Thursday.

—V. H. Hanesek.



George P. Tully

To our many New England friends, best wishes for a merry holiday season and happiness and success throughout the year. The growing appreciation of the Univis sales policy expressed and shown by our licensees during 1933 has been a source of great satisfaction. You have many years to look confidently forward with Univis—years of satisfied bilateral owners and protected profits.

I wish to take this opportunity to thank our licensees and the personnel of our distributor organizations for their fine co-operation.

—George P. Tully.



Roy Marks

To say that it has been a pleasure dealing on the business of the Univis Corporation, would be too mild a statement.

I have enjoyed every minute of my work in the field, contacting your men, and can honestly say that I look forward to my trips. True, we have had our little differences but they have all been friendly little "iffs" and we usually parted understanding each other. Hope to see you all next year.

—Roy Marks.

# Here's How!

BY VIRGIL HOYT HANCOCK

This is one of a series of articles on Fitting by Mr. Hancock, writing from his own experience as a dispenser and from observation as a traveling representative of The Univis Lens Company.

We have been receiving such requests for detailed trials of fitting instructions. Positive fitting of the UNIVIS TRIPODAL is so simple that it can be described in six sentences. Using a 1.50 Add for the unaided vision and a 0.75 Add for intermediate vision and a 1.50 Add for reading vision, place the top of the intermediate field 6 1/2" higher than you would have placed a Univis B-10 on the same patient.

That's all there is to setting the Univis Triodal correctly. But from all this, the danger of "oh, that's too high a point, could never work with a customer that high" and "it's too much to get used to" is eliminated. And I read a few terrible letters years ago and they cost me money every time—surely we can obtain the "map" of an entire instruction.

First, it's because of the fact of these changes. I have been tried since 1901 but have never enjoyed any general use. It is self-evident that had any one of the previous difficulties been completely satisfied there would have been no need for reasons for the Univis Triodal to have been designed and manufactured. And so it has only become all prior criticisms had pointed out—now that UNIVIS introduced its efficient and practical Univis Triodal.

The second objection—that only a super-intelligent patient could handle these trifles—is also without foundation.

Some optical complaints can be attributed to the distance movement up and down and up again by Mr. Presbyope's head as he probably swivels across his natural eye range in a constant effort to get clear vision at some length—then close his eyes because he can't see far through his eyes.

The intelligent patient, when first fitted with bifocals, can be instructed in more than one way to see an object at arm's length. But it is the almost-rotated head who cooperates for "oh, yes, but I can't see off here! I could see off there with my old glasses—there isn't as good as my old ones!"

The Univis Triodal will let him see off there to his heart's content.

Jump I. Fitting from the intermediate field to the reading field of the Univis Triodal, the entire construction of the Triodal from "center" as in the Univis B-10.

This almost complete association of displacement between intermediate and reading vision is necessary especially for those working on near targets. Vision from the top of the Triodal of a distance without any "cut" line of the eye.

There are the reasons why, when properly fitted, the Univis Triodal can be worn successfully by others than the "Bifocal King".

The refracted eye, however, the "presbyope's" "trial" and addition of providing Univis Triodal.

Given a presbyope 40 years of age, a 1.50 Add for his near work, the refracted eye would be 1.50 Add below in providing Univis Triodal for that same patient, the refracted eye would be the patient's full 1.50 Add for reading, and the intermediate field, 6 1/2" Add will take care of the rest of his work.

THE INTERMEDIATE ADDITION IS ALWAYS EXACTLY SIXTY PER CENT OF THE READING ADDITION IN THE UNIVIS TRIPODAL.

Now let the very first objection—the "too high" fear.

You must realize that the Triodal is not a "natural" reading. There is, whether a 1.50 or a 0.75 Add Triodal, the strength of the reading eye would be placed in such a position to afford complete satisfaction in reading.

In the last issue of THE UNIVIS JOURNAL the Univis Formula with its accompanying explanation proved conclusively the efficiency of the absolutely straight eye reading eye, and in the same JOURNAL I explained the method of locating the natural eye height.



FIG. 12

In Figure 12 I have indicated by a dotted line the distance from the reading eye height of any individual's eye to the top of the Triodal. The straight top of the Univis Triodal's reading field can be placed no farther than such a distance.

Employing the Univis Formula, we find the exact distance in terms of the Triodal's perfectly straight top reading eye to be 6 1/2" from the natural eye height.

And this is the intermediate field with the center of the pupil when the eye is up and the head in a very good position, as mentioned in my last monthly article.

Please now and watch people walk along the street.

Ninety-nine out of ten will find their heads slightly inclined forward even with this 6 1/2" of reading, but will not find this eye up and the head in a very good position, as mentioned in my last monthly article.

And, last, it notes that the complete Triodal, which intermediate power with perfectly clear vision of the world, never happens to look through it at the ground.

Try it. Put the Triodal in front of your eyes. It is a simple statement, but it is the lack of eight years' experience in using all possible Triodal eye proportions and eye height.

The plate of nearly all intermediate vision is immediately superior to the plate of the reading vision. So, if the Univis Triodal's reading eye is placed in a natural position, it is only necessary to raise the eye, and the head to look at the intermediate eye.

And complete eye Triodal eye height and 2" from the eye as a Univis B-10.

Figure 13 is for the chapter, "How to use the Triodal and proportions."



FIG. 13

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## THE UNIVIS BULLETIN

November - December  
1915. CopyrightedTHE UNIVIS CORPORATION  
DAYTON OHIOEdited by  
L. V. BrownHow to Solve the Problem  
of Correct Segment HeightImportant Factor of Bifocal Comfort  
Discussed, with Interesting Facts and FiguresGEORGE SWIKART, Optometrist  
New York City

It is a sad fact that many of the people who fit with bifocals, are disappointed in their effort to "make a better" pair of glasses out of them. Most of them are the buyers of glasses, the other members of which go where the trade direct. Many are the heads of commercial and industrial organizations with wide connections, and, for this reason, many are in the social class, with nothing more to be said, and they like better to do, than put the glasses on their practitioner.

All are disappointed about bifocals, naturally the most frequent are either that the segment gets in the way at distance and the correct vision, which is necessary in all reading segments, is so low in the lens that the upper face is held by a head in an artificial position to read.

Every one of these complaints means that the latter are in two things: trying to make one pair do the work of an outfit of at least two pairs, a high-class pair of readers and a low-class pair for outdoors, and then, having made the first error, to say not a good enough remedy as he has taken to put the top edge for the distance eye.

If we can find a lens that gives us a high level for near, that is not such a complicated proposition as to say that we should give equal emphasis to the old standard, a lens that only will be made to fit, but the answer will have an easy time with it.

Optometrists are certainly generally, but given very little consideration to the reasons for the different shapes of the various lenses. They can show you the reason for the "lens" for that, but a simple design, especially for near vision, is a very strange to say, and it is



these prejudices are well founded, without having the man who expressed an opinion able to explain the reason. Many of them say, "I use the lens, but having had so much luck with the Others, practically all of them." Never try to change a patient from the to the or vice versa. Still others will tell you that they tried one lens or another, that in those cases they were probably better lenses, but that on account of the expense the patients, probably expected too much, and so, were not satisfied. No they stopped using these better lenses, and often will readily admit that they used so few of them that they hardly had a chance.

I would not presume to take up all the features of all the different kinds of bifocals now available. I am simply going to show some of the reasons why the lens may be preferred to another in any case, particularly why the new style straight-top segment not only can, but practically must, stand lower in the major lens than a "top" lens.

For our present purpose it will suffice to consider two features, first the effect of the shape of the upper edge, and second, the effect of prismatic value at the upper edge. To those men to whom the size of the amount in these calculations seems small I would recall the old saw about "An inch isn't much on a mile, but it is useful on the end of your nose." Certainly, on the upper edge of a bifocal segment, a millimeter has much to recommend. More otherwise satisfactory bifocals have been discarded for this reason than any other.

No fitter should neglect the resultant factors that favor lowering the top edge of the segment without requiring changes in position of head or position of work. If one style segment can consistently be fitted lower than another; that is, more low of the way of distance without making it too far near difficult, certainly the second should never be used. If one style of segment is so far better than another that at the same time it can be easier to wear both for distance and for near, it should be necessary only to point out the reasons for the difference.

For the purpose of the present demonstration we will

1. Assume all the segments placed in a major lens of no power, in a "plane" upper.
2. disregard "size of effective pupil of entrance," "deflection," etc.
3. Assume a pupil of such small size that the entire area of the segment is usable, neglecting for the time being the added advantage for the straight-top segment with a larger pupil in use.

Under these conditions, the minimum size of segment, 15 mm from the center of rotation of the eye, to cover a circle the size of a single newspaper column (54 mm) at a working distance of 50 meters from the lens may easily be calculated as follows:

(Continued on last page)

A supplementary sheet accompanying this bulletin shows photograph of a new Univis Window Display Card. This card is photographed in the column, it will be sent to you on request without charge.

850

# 476 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

center of that thin white line and give your patient the full, wide, and natural reading posture.

To locate this useful center from the face, the simple glasses that mark a white band extending from the thin white line to a point far beyond the nose line.

Remove the glasses from the patient and instruct him to hold a card vertically at eye level, a spring position. Tell him to read the printed text on the card. He will find that his eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right.

Adjust the patient that you intend shifting his glasses so that he can read

naturally. That is, the glasses should be so adjusted that the eyes are in the center of the white band. This is because the eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right.

In order to make a good reading posture, the eyes must be in the center of the white band. This is because the eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right.

Adjusting the eyes to the center of the white band is the key to good reading posture. This is because the eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right.

from behind the nose line, pointing out that the eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right.

Also, if you have a patient who has a high nose bridge, you may find that the eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right.

You make the greater part of your income from your optical shop. Therefore, it is to your own financial interest to have a set of more eyes in the shop and in the hands of your patients. This is because the eyes are not in the center of the white band, but are shifted to the right. This is because the eyes are not in the center of the white band, but are shifted to the right.

© 1934 by Univis Lens Co.

## Single Column Newspaper Ads --- Mats on Request Without Charge

In response to requests for some small single column Univis ads with copy similar to that used in larger two column lay outs, we offer mats of the ads shown below. Without charge. Please specify the ones you want by their numbers and send your request to The Univis Corporation, Dayton, Ohio.

No. F-106



The new Univis Triplex lenses have selected the right of men and women, of mental and physical age, to be corrected. They correct or focus nearly every vision near and far with complete ease.

Only specially selected optical establishments are authorized to fit Univis Triplex.

Space for Name, Address, Etc.

No. F-107



Your eyes work with you every day. They work with you every day. They work with you every day. They work with you every day.



For almost twenty years, the famous UNIVIS Triplex lenses provide the perfect vision every day and everywhere.

Space for Name, Address, Etc.

No. F-108



Especially adapted for persons whose vision requires wearing of several pairs, small size, the intermediate range. Three focal powers combined in one lens, providing clear vision, near, intermediate and distance. If you cannot see clearly at various ranges, consult us about the UNIVIS TRIPOCAL.

Space for Name, Address, Etc.

No. F-109



Special lenses are made for you. They are made for you. They are made for you. They are made for you.

Space for Name, Address, Etc.

One of the advantages of featuring Univis Refracts is only advertising is that three lenses are out in the hands of shoelers.

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# The Univis Bulletin

ISSUED SIX TIMES YEARLY BY THE UNIVIS LENS CO. - DAYTON, OHIO

VOL. 16, No. 2

May-June 1941

## IT'S ALL DONE WITH MIRRORS!

By VIRGIL HANCOCK

### 15-Minute Explanation of a 60-Second Procedure

THIS unique method to determine the preferred reading depth of near-sighted patients has been demonstrated in previous articles.

The manner in which this is accomplished has been demonstrated frequently in cases carried out by the author, but it is here that the reader is to learn the reason why this is so easy to do. It is not a matter of "guessing" or "estimating" but of "knowing" the answer to the question of the patient's reading depth.

There is a misconception that this is the only accurate method known to the author for determining exactly and quickly the reading depth and height of the reading system. It is not a matter of "guessing" or "estimating" but of "knowing" the answer to the question of the patient's reading depth.

#### EQUIPMENT NEEDED

1. A mirror, 10" x 12" or larger, with a frame. 2. A small mirror, 2" x 3" or larger, with a frame. 3. A small mirror, 2" x 3" or larger, with a frame. 4. A small mirror, 2" x 3" or larger, with a frame.

#### THE METHOD

Step 1. The patient is seated in a chair, facing the mirror. Figure 1.



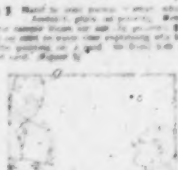
Step 2. The patient is asked to hold the book in front of the mirror. Figure 2.



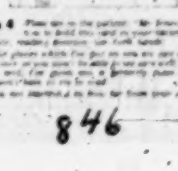
There will now be a reflection of the book in the mirror. The patient is asked to read the reflection. Figure 3.



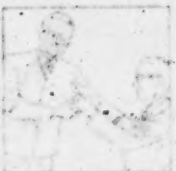
Step 3. The patient is asked to move the book closer to the mirror. Figure 4.



Step 4. The patient is asked to move the book further from the mirror. Figure 5.



It will now be seen that the patient is able to read the reflection of the book in the mirror. The patient is asked to read the reflection. Figure 6.



Step 5. The patient is asked to move the book further from the mirror. Figure 7.



Step 6. The patient is asked to move the book further from the mirror. Figure 8.



Step 7. The patient is asked to move the book further from the mirror. Figure 9.



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Page 1

# The Univ

## Reading Field Comparator Proves Effectiveness of "Picture" Over "Explanation"



Experiments using Univis lenses indicate that the Reading Field Comparator is proving unusually effective in demonstrating the superiority of the Univis through Topograph. The records illustrate, in a very large number of instances, why the use of the Comparator, alone, a marked increase in the use of Univis lenses for perspective eyes.

The Comparator does practically, by means of viewing against slaps, the difference between the normal eye and the Univis through Topograph in the reading of a full-sized magazine article. The material viewed was classified by the Univis as a normal eye and consequently appeared. The average person in such cases, capable of making a detailed review of explanations of it in an all-around, but the comparison presents a picture, which is quickly understood.

Another desirable and necessary quality is the ease of use of the Comparator, according to the records, in the great time-saving obtained by simply holding the handle instead of giving a lengthy discussion.

The Comparator is obtainable through Univis distributors as a separate device. It is obtained in 1940, which is subject to Univis in full in 100 parts, and 100 parts are purchased. The remaining details are in the Univis. Part of the 100 parts are in the Univis, and the rest are in the Univis.



### MORE POETRY

By J. D. Smith, a University of Chicago, who has been named as the author of the poem "The Univis" in the Univis.

The Univis is a poem of the Univis, which is a poem of the Univis.

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The Univis is a poem of the Univis, which is a poem of the Univis.

The Univis is a poem of the Univis, which is a poem of the Univis.

### GREAT INTEREST IN A. O. A. CONVENTION

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The Univis is a poem of the Univis, which is a poem of the Univis.

## ARE CORRECTED CURVES WORTHWHILE?

There came to mind the question in mind whether the use of corrected curves is of any real consequence.

Since 1920, when Univis became the first of the Univis, the Univis has been the Univis, which is a poem of the Univis.

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Continued from Page 10  
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Step 1: The Univis is a poem of the Univis, which is a poem of the Univis.



Step 2: The Univis is a poem of the Univis, which is a poem of the Univis.



Step 3: The Univis is a poem of the Univis, which is a poem of the Univis.

# is Bulletin

Remember... the when your price should go  
up and the when it should go down.

When the price goes up, the price goes up.

When the price goes down, the price goes down.

When you are in a hurry, remember that  
the price goes up. When you are in a hurry,  
remember that the price goes up. When you are  
in a hurry, remember that the price goes up.

THE BOTTOM OF THE BOTTLE...  
THE BOTTOM OF THE BOTTLE... THE BOTTOM OF THE BOTTLE...

to check and double check, the when always takes  
double and the when goes and makes a small  
change in the price of the bottle.

When you are in a hurry, remember that  
the price goes up. When you are in a hurry,  
remember that the price goes up. When you are  
in a hurry, remember that the price goes up.

I think and double check the price.

Step 2. Tell the price to the man who the  
price goes up.

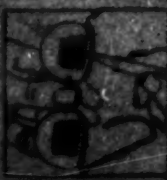
When you are in a hurry, remember that  
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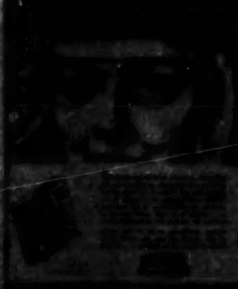
## PLEGDED TO ONE QUALITY!

We believe that no lens can be so good for  
the human eye. This is why we have always  
maintained a policy of "One Quality Only."  
We have never knowingly supplied any lens  
of higher quality elsewhere than through  
The United Lens Company, Dayton, Ohio.



UNIVERSITY MICROFILMS INTERNATIONAL  
SERIALS ACQUISITION  
300 N. ZEEB RD.  
ANN ARBOR, MI 48106-1500

## SOLD



## NEED FOR QUALITY "TRULY TRUTH" EMPHASIZED

When you are in a hurry, remember that  
the price goes up. When you are in a hurry,  
remember that the price goes up. When you are  
in a hurry, remember that the price goes up.

# The Univis Bulletin

## HE DIDN'T PRESCRIBE VERTICAL INEQUALITY!

But you know how hard finding glasses is. You know how often the doctor at the optician's points the finger at the doctor who didn't prescribe the right kind of glasses. You know how often the doctor at the optician's points the finger at the doctor who didn't prescribe the right kind of glasses. You know how often the doctor at the optician's points the finger at the doctor who didn't prescribe the right kind of glasses.

But now, a new method has been developed. It's called the "Univis" method. It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses.

It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses. It's a new method for finding glasses.

WE HAVE ANALYZED THE PROBLEM. WE FIND A VERTICAL FORM UNUSUAL IN THE HUMAN EYE. WE RECOMMEND THE BUCKLE EYEGLASS DESIGN. IT IS THE ONLY DESIGN THAT WILL GIVE YOU A RELAXED EYE AND COMFORT.

UNIVIS LENS CO., INC.

## ANOTHER TRIFOCAL TRIUMPH!

THE TRIFOCAL EYEGLASS IS THE ONLY DESIGN THAT WILL GIVE YOU A RELAXED EYE AND COMFORT.

UNIVIS LENS CO., INC.

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UNIVIS LENS CO., INC.

THE TRIFOCAL EYEGLASS IS THE ONLY DESIGN THAT WILL GIVE YOU A RELAXED EYE AND COMFORT.

UNIVIS LENS CO., INC.

Repeat in the picture the instructions you gave him in Step 1. (Continued from Page 5.)

When he has the "Univis" position, turn both eyes to center the "Univis" position.

Step 10 Now, put the glasses on his face, while he maintains the position and keep the eyes in the normal reading position. (Figure 10.)



For the patient to make this position while you put up the glasses and adjust step 10. It is hard the first time, but if you had a model head with the glasses on, the patient should find that the head is in the right position on the top of the black pupil in each eye. (Figure 10.)



At the white line, which is the line that the eyes move the glasses and when the head is straight, the eyes are in the right position.

If the white line comes down to the top of the black pupil, the eyes are in the right position.

When you're seated, the eyes are in the right position.

When you're seated, the eyes are in the right position.

When you're seated, the eyes are in the right position.

When you're seated, the eyes are in the right position.

When you're seated, the eyes are in the right position.

When you're seated, the eyes are in the right position.

When you're seated, the eyes are in the right position.

The psychological value of this. You have made the patient realize that he has a responsibility in the choosing of the lenses as they fit him about the normal reading habit.

When he returns to center the glasses, it is well worth a comment to "look off" of the distance position, repeat step 9, and then place the glasses upon the face.

When you're seated, the eyes are in the right position.

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When you're seated, the eyes are in the right position.

## COMMENTS

By the Observer

The look at things, which are supposed to be the same, but they are not. They are not the same. They are not the same. They are not the same. They are not the same. They are not the same.

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849

THE

*Shadowgraph*

TEST

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Reprinted from  
Optometric Weekly



## The Shadowgraph Test

Recent conventions have featured a display of the Univis Lens Company, which Univis technicians call the "Shadowgraph" test for bifocal segments.

The test consisted of projecting a light through three types of lenses—36 mm. seg., 22 mm. seg., and a Univis "D" seg.—so that their shadows were cast in sharp focus on a screen. The purpose of this demonstration was to show that, regardless of the distance Rx (whether O.L.  $\pm$  5.00, or O.L.  $\pm$  3.00, or O.L. Plano), the Univis segment does not alter, in any way, whatever vertical prismatic effects exist in that same distance lens as a single vision lens.

The "Shadowgraph" test showed that, under every condition, the optical center of the Univis "D" segment remained the same—exactly 5 mm. below the reading segment—the normal, comfortable reading position. The optical center of other lenses "shadowgraphed" was shown to be either actually outside of the lens or at the extreme bottom of the segment.



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FIGURE 1. The three units of the Compagnie the light source is Spencer Lamp Company projection, the screen, and the lateral lenses which were compared. These three units are shown here, in operation, with the lateral lenses in position, then the projection and screen are extinguished. The lenses are, from left to right a 22 mm. round segment, a 1.5x19 D-19, and a 30 mm. semi-circular one-piece segment. Each lens is the same power Rx. Distance plane. Add +3.00.

FIGURE 2. A close-up of the three lateral lenses and the screen. Each of the three lenses is identical in Rx. Distance plane. Add +3.00. The light from the projection is brought to a focus on the screen through each segment. The position of each segment's optical center is shown unobscured.

At the left of the illustration the 22 mm. round segment's center is shown 11 mm. below the top of the segment, almost at the location of the lens.

At the right of the illustration the 30 mm. semi-circular segment's center is shown 19 mm. below the top of the segment, still "outside" the lens.

In the center of the illustration the 1.5x19 D-19 segment center is shown exactly where the screen will read -5 mm. below the top of the segment, in the natural reading position.

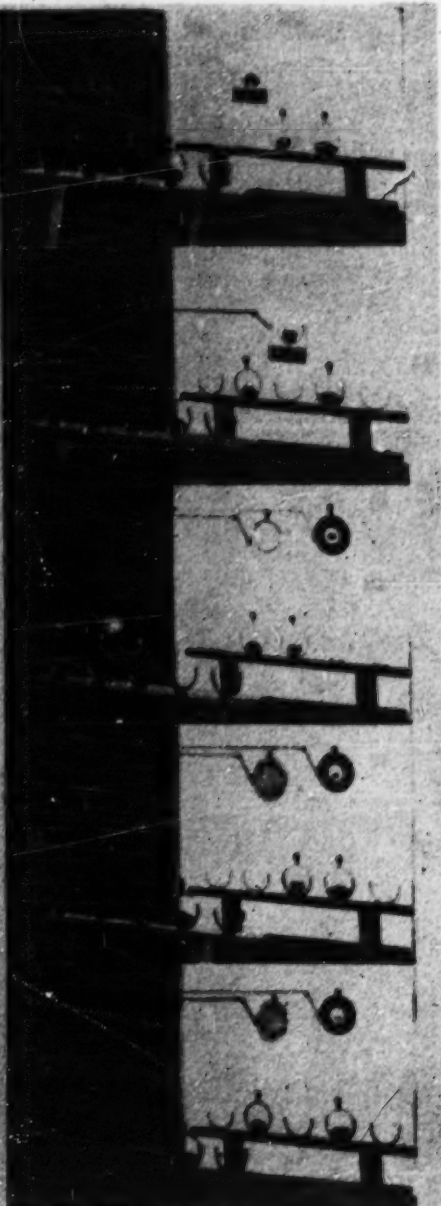
FIGURE 3. Same close-up as Figure 2, but showing more clearly that the one-piece segment's optical center is actually "outside" the lens - at the bottom of the lens.

FIGURE 4. Showing two 5  $\Delta$  plano prisms.

FIGURE 5. The two 5  $\Delta$  plano prisms are held, back together, to show the "cross section" prismatic effect of a +5.00 sphere at points 10 mm. above and below the optical center of a +5.00 sphere. Because lateral vergence reads only through the lower half of the lens, the upper half of the +5.00 and the upper 5  $\Delta$  plano prism may be disregarded - and consideration given to the lower 5  $\Delta$  base up prism. A +5.00 sphere at 10 mm. below its optical center produces 5  $\Delta$  base up.

FIGURE 6. The 5  $\Delta$  base up is superimposed against the 30 mm. semi-circular one-piece lens focal, which, it should be remembered, is Add +3.00. It is important to note that the optical center of the segment is still "outside" the lens.

FIGURE 7. With the 5  $\Delta$  base up superimposed against the 22 mm. round segment lateral (also Add +3.00), this lateral segment's optical center is still shown above at the bottom of the lens.



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Page 1

FIGURE 8.  $5 \Delta$  base up against the Add +3.00 Univis D 19 clearly indicates that this improved segment's optical center is still at that point 5 mm below the top of the segment—right where the patient reads naturally and with "effortless comfort."

FIGURE 9. Here, a +5.00 spherical meniscus lens is superimposed against the semi-circular segment our piece bifocal. Please remember that the bifocals being compared, in this series of photographs, are all the same Rx: Distance plano, Add +3.00. Therefore, this combination with a +5.00 meniscus is the same as if it were one lens of the Rx: Distance +3.00, Add +5.00. Note that this semi-circular segment's optical center is still "outside" the segment.

FIGURE 10. The +5.00 meniscus against the Add +3.00 22 mm. round segment, producing the Rx: Distance +3.00, Add +5.00, still shows this segment's center awkwardly near the bottom of the segment.

FIGURE 11. Again, the +5.00 meniscus in contact with the Add +3.00 Univis D 19 segment (that same Rx: Distance +3.00, Add +5.00) proves that the D 19 segment's center is comfortably and naturally 5 mm. beneath the top of the segment—right where the patient needs it!

FIGURE 12. The two  $5 \Delta$  prism powers here are held apex to apex, forming a formal "cross-section" of a -5.00 sphere at points 10 mm. above and below the optical center of a +5.00 sphere.

FIGURE 13. With the  $5 \Delta$  base down prism superimposed against the one-piece semi-circular segment, that segment's center again is proved to be "outside" the segment.

FIGURE 14. With the 22 mm. round segment against the  $5 \Delta$  base down prism, this segment's center is still near the bottom of the lens—too low for "effortless comfort."

FIGURE 15. The Univis D over the  $5 \Delta$  base-down prism doesn't alter the desirable, efficient, "easy, trading" position of this fine segment's optical center.

CONCLUSION: In any prescription, plus or minus—O.U., +5.00, Add +3.00, O.U., -5.00, Add +3.00; P.U. Plano, Add +3.00, O.U., +3.00, Add +3.00, Univis permits "single-vision" reading comfort and clarity!



SUPPLEMENT TO THE UNIVIS BULLETIN, SEPTEMBER, 1905.

# Here's How!

BY VIRGIL HOYT HANCOCK

This is one of a series of articles on Focusing by Mr. Hancock, writing from his own experience as a draftsman and from observations as a traveling representative of The Univis Lens Company. The opinions he expresses are not necessarily those of the company, in every particular, but all will tend in the articles explanation and suggest things that will be valuable to them. We will welcome comments and criticisms of these articles.



FIG. 6



FIG. 7

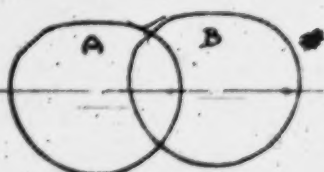


FIG. 8

When the object is placed at the focus of the lens, the image is formed at infinity.



When the object is placed at the focus of the lens, the image is formed at infinity.

When the object is placed at the focus of the lens, the image is formed at infinity.

When the object is placed at the focus of the lens, the image is formed at infinity.

- 1. The object is placed at the focus of the lens.
- 2. The object is placed at the focus of the lens.
- 3. The object is placed at the focus of the lens.
- 4. The object is placed at the focus of the lens.
- 5. The object is placed at the focus of the lens.
- 6. The object is placed at the focus of the lens.
- 7. The object is placed at the focus of the lens.
- 8. The object is placed at the focus of the lens.
- 9. The object is placed at the focus of the lens.
- 10. The object is placed at the focus of the lens.

When the object is placed at the focus of the lens, the image is formed at infinity.

When the object is placed at the focus of the lens, the image is formed at infinity.

837







chapter given me by J. Otto White, Jr. D. of Baton Rouge, Louisiana.

Now, note the following two pictures. In Figure 2a, the camera is placed in the position of my LEFT eye, and the 0 mark on the rule shows the inner edge of the patient's right pupil. Notice particularly that in this Figure 2a the patient's left pupil outer edge measures 61 mm.



(FIGURE 2a)



(FIGURE 2b)

In Figure 2b, the camera represents my right eye and shows that the distance from the center of the patient's left pupil to the center of the camera is 61 mm. This distance is the same as the distance in Figure 2a.

Now, note the following two pictures. In Figure 2c, the camera is placed in the position of my RIGHT eye, and the 0 mark on the rule shows the inner edge of the patient's left pupil. Notice particularly that in this Figure 2c the patient's right pupil outer edge measures 61 mm. This distance is the same as the distance in Figure 2a and 2b.

Now, note the following two pictures. In Figure 2d, the camera is placed in the position of my LEFT eye, and the 0 mark on the rule shows the inner edge of the patient's right pupil. Notice particularly that in this Figure 2d the patient's left pupil outer edge measures 61 mm. This distance is the same as the distance in Figure 2a and 2b.

Now, note the following two pictures. In Figure 2e, the camera is placed in the position of my RIGHT eye, and the 0 mark on the rule shows the inner edge of the patient's left pupil. Notice particularly that in this Figure 2e the patient's right pupil outer edge measures 61 mm. This distance is the same as the distance in Figure 2a and 2b.

stood her gage at a point 20 feet or more away. I achieved parallelism between her right and left lines of vision.

I have not found it satisfactory to ask the patient to focus her eyes on infinity first, because the average patient has his gaze wander, and, second, because I never had twenty feet between my back and a wall.

A good light, but not too glaring, upon the patient's face is essential.

Details in dealing with a dark eye. To obtain a right will make your patient squint, and, if she is under the influence of a hypnotic agent, it may be actually painful to her.

Note that I always instruct the patient to keep both her eyes open. Otherwise some of them have a tendency to close back to me, which causes discomfort if her body happens to be touching the procedure.

W. H. Edwards

# UNIVIS

UNIVERSITY OF VISION

The most complete bifocal service

UNIVIS STYLE B

NEAR VISION

UNIVIS STYLE B

NEAR VISION

UNIVIS STYLE B

NEAR VISION

UNIVIS STYLE B

NEAR VISION

UNIVIS TRIFOCAL

NEAR VISION

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NEAR VISION

PROTECTED DISTRIBUTION

THE UNIVIS CORPORATION DAYTON, OHIO

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## How to fit Univis Trifocals - - and WHY!

Proper fitting of linear models. It is simple that it can be described in the context:

Please the finding pointed the Federal in exactly the same position that you would fit 2" open 11" 1/2 and that, approximately places the intermediate field in correct position giving the wearer thoroughly comfort while use of all these fields.

Experiences in performance are thousands of times more effective than the words of a single cultural warrior protest.

The southern way of putting it, the "top of the tail" intermediate field, would be fitted into the higher, that is, "upper" "B" beyond would have been fitted in the outer tail.

The top of the trifurcal independent light assembly must be fitted up to where the holes are drilled.

The tip of the trifurcated intermediate feed must be fitted about four degrees than you would have fitted a blunt round barrel segment on that patient.

In fitting tribulations, please remember that the patient is buying the wedding field for nothing. Therefore, placing the wedding field is exactly the same position as you would have placed a Ubrico. It follows in that same patient, you must place the top of the intermediate field twice higher than you would have placed the top of a Ubrico. It's natural.

Tribunal Secretariat never thought possible to achieve  
this. Inordinately so regional office. This was  
not recommended in the report. But this is the  
point of state report of national government.

It is in our own interest to recommend to you the use of **InfraRed** dye which we know will give you extra factory to your pocket. Therefore we give you the right to make 20 to 25% more profit.

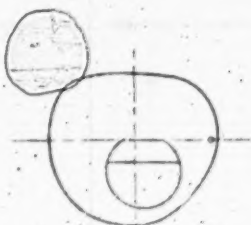
That's all there is to fitting the Fitbit. Not much, is it? Fortunately, that means it takes the strain off the other leg. In high school, I could never walk with a leg brace (let's call it "the leg") and "It's hard enough to get out of bed."

and "I tried a few different ways, and finally they kept me money every time." (p. 10)

[illegible]

The second objection that says a corporation's interest could lead to more influence in the business community.

Some of our complaints are as follows: The work is not done up and down and up again by Mr. Thompson's head as he probably wishes to be satisfied by means of a finished effect to give the work a certain length. And also for the distance. It will be so through his work.



The report of the survey is being prepared in a form which will be made available to the public in a separate publication.

There were some problems when first faced with a situation like the one described above. However, after the first two or three attempts, we were able to handle the situation in a satisfactory manner. The only recommendation was to be sure that the first few minutes of the interview were spent on the most important points of the interview. This was done by the first few minutes of the interview.

[illegible]

Example 1. For any function  $f$  continuous on  $[a, b]$ , the value of the definite integral of the square of the function is less than or equal to the square of the definite integral of the function.

4. The present research contributes to the understanding of how stakeholders are making sense of the new idea, such as the right thinking is being used, and the right people are involved in the creation of a culture of innovation.

## 490 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

The straight top of the reading eye would be placed in such a position to afford complete satisfaction in reading. Please now and watch people walk along the street.

Nineteen out of twenty will hold their heads slightly inclined forward—not with chin on chest, of course, but sufficiently tilted that no additional tilting is necessary for a screen wearing properly positioned Univis spectacles to see the ground 20 feet in front of him. By "ducking" his head he can see those feet in front of his chin.

Also, bear in mind that the comparatively weak intermediate power will give fairly clear vision if the wearer does happen to look through it at the ground.

The clear vertical intermediate field is "single far almost all cases. That is not an arbitrary statement, but is the teaching of eleven years' experience in using all possible trifocal eye prescriptions and eye lengths.

The place of nearly all intermediate vision is immediately superior to the plane of natural reading vision.

So, if the Univis trifocal's reading eye is placed in a normal position, it is only necessary to raise the eyes out to move the head—to make use of the intermediate eye.

And suppose each trifocal eye were turned 180°—the same as a "Cope" "D-18."

The Univis trifocal long ago seemed to be an experiment. Many men, who were shied away from prescribing trifocals, find that Univis trifocals have a very definite place in their service. We now find doctors wearing trifocals—also ministers, clerks, druggists, salesmen, designers, decorators, engineers, accountants, teachers, housewives. In mention a few of the groups that come to mind.

And so without are we of these results that we confidently state that any normal person, whose occupation or avocation necessitates his seeing clearly at an intermediate distance, can expect today to be fitted satisfactorily and satisfactorily with a pair of modern Univis trifocals.

THE UNIVIS LENS CO.

DAYTON, OHIO



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## SIZE OF COMPENSATED UNIVIS BIFOCAL SEGMENTS

### Surfacing Instructions

Segment Number	21mm SEGMENTS		23mm SEGMENTS	
	Length of Top Line	Length of Bottom Line	Length of Top Line	Length of Bottom Line
4	19½	7	20½	9½
5	18½	11	19½	12½
6	17½	13½	18½	15
7	15½	15½	17	17
8	13½	17½	15	18½
9	11	18½	12½	19½
10	7	19½	9½	20½

COMPENSATED SEGMENTS 4 to 10—the numbers also indicate the position of the optical centers of segments in relation to the top of the segments.



843



# SURFACING INSTRUCTIONS FOR BI-CENTRIC (SLAB-OFF) GRINDING



Diagram Showing Bi-centric Grinding Method

1. Select a good quality blank of the required size and shape. The blank should be free from all defects and should be of uniform thickness.

2. The blank should be ground on both sides to the required thickness. The grinding should be done on a bi-centric grinding machine.

3. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

4. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

5. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

6. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

7. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

8. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

9. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

10. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

A good bi-centric grinding machine is a bi-centric grinding machine. The grinding should be done on a bi-centric grinding machine. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

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## EQUIPMENT NEEDED

- (1) A thick rough 1 mm blank of the required base and add
- (2) A 2.5 or 3 mm single frame of mm round rough moulded blank
- (3) Accurately gauged spherical tool
- (4) A hard pitch or fibreglass polishing pad
- (5) New rubber Polishing Spoon
- (6) A stock of 10 mm Prepared Canada Balsam
- (7) A 12 or 14 mm round blank of iron base

Using the new spherical tool and the new iron base, the lens should be ground on the 12 mm round blank of iron base.

The lens should be ground on the 12 mm round blank of iron base. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

The lens should be ground on the 12 mm round blank of iron base. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

The lens should be ground on the 12 mm round blank of iron base. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

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The lens should be ground on the 12 mm round blank of iron base. The grinding should be done in a series of passes, each pass removing a small amount of material. The grinding should be continued until the required thickness is reached.

844

## SURFACING INSTRUCTIONS (continued)

perfectly flat, open, sloping hill, as if  
with level and parallel with the top  
line of the ground. Its summit was  
and into the valley, but in the black  
and low, the line straight.

Start with the top layer, where the x-axis of the "real" segment is  $\frac{1}{2}$  and the half distance along the top of the layer segment is  $\frac{1}{2}$  (Figure 2).

If you have a perfect "fit," what your drawing conveys is that you share the same "top-down" view, namely, G; the surface, but also there.

Next, subjects were a little more patient and by the following week, everything was back to normal.

6.8.81. 5.11.9. 2.8.16. 3.8.17.

K. F. F. THERM. ANAL. 1003

Remember how beautiful life is. It's  
not all that exciting, though - but I get  
out the books to get her changed to  
within the content - we would run and  
back.

OF A SLOW BOUNCE, TAKE  
YOUR TIME.

After the blank is polished carefully  
 knock off the blow. BUT LEAVE ON

THE ECONOMIC EFFECT OF THE  
LENS

[illegible]

The new bridge, 200 ft. long and 20 ft. wide, has the original two 15 ft. x 14 ft. piers at 100 ft. apart, 195 ft. apart at the ends, and is supported by four intermediate piers.

There is also the possibility of a low level BASE (1) FULM, and a higher level FULM (2) FULM, as shown in Figure 3. You should be aware, but this is not shown in Figure 3.

We state that we are not aware of any other persons who have been involved in the same type of activities as those described above.

THE UNIVIS LENS COMPANY

DAYTON, OHIO



845

UNITED STATES v. UNIVIS

No: Patents Listed in Answer  
and Amendment to Answer

RECEIVED  
U.S. DEPT. OF JUSTICE  
JAN 10 1946  
DIVISION OF INVESTIGATION

RECEIVED JAN 10 1946

896

Registered Nov. 29, 1927.

Trade-Mark 235,817

# UNITED STATES PATENT OFFICE.

THE UNIVIS LENS COMPANY, OF DAYTON, OHIO.

ACT OF FEBRUARY 20, 1904.

Application filed July 9, 1927. Serial No. 781,798.

# UNIVIS

## STATEMENT.

To the Commissioner of Patents:

The Univis Lens Company, a corporation duly organized under the laws of Ohio, and located at Dayton, Montgomery County, Ohio, and doing business at 215 Third National Bank Bldg., Dayton, Ohio, has adopted and used the trade-mark shown in the accompanying drawing, for OPTIC-MATIC LENSES, in Class 28, Measuring and scientific apparatus, and presents herewith two specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1904, as amended.

The trade-mark has been continuously

used and applied to said goods in applicant's business since January 30, 1925.

The trade-mark is applied or affixed to the goods by placing the printing in position on which the trade-mark is shown.

The undersigned hereby appoints Toulson and Toulson, Harry Aubrey Toulson and Harry Aubrey Toulson, Jr., its attorneys, with full powers of substitution and ratification, to prosecute this application, to correspond, to make all arrangements and attend to the prosecution of the application, and to transact all business in the Patent Office connected therewith.

THE UNIVIS LENS COMPANY  
By: J. P. MERRIDAN, Jr.,  
Secretary.

897

Registered Nov. 27, 1928.

Trade-Mark 250,138

# UNITED STATES PATENT OFFICE.

OF THE UNIVIS LENS COMPANY OF DAYTON, OHIO

ACT OF MARCH 19, 1909

See 22nd January 24, 1928. Serial No. 880,708

UNIVERSAL VISIBILITY

To the United States Patent Office:  
The Univis Lens Co., duly organized under the laws of Ohio, and having its principal place of business at No. 250 Third National Bank Building, Dayton, Ohio, has adopted and used the trade-mark shown in the accompanying drawing, for OPHTHALMIC LENSES, and Class 26. Measuring and would the applicant, and presents herewith five specimens of samples showing the trade mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1909.

ENT.  
The trade-mark has been continuously used since 1910, and goods manufactured by the Univis Lens Co. since 1917.  
The trade-mark is applied or affixed to the goods by printing the mark on the package containing the goods.  
The mark has been in bona fide use for more than one year in interstate commerce by the applicant.  
Dayton, Ohio, September 17, 1928.

THE UNIVIS LENS COMPANY  
BY *W. H. STURGEY*

898



June 14, 1927.

F. B. WATSON ET AL

1,632,208

LENS

Filed Nov. 21, 1925

Fig. 1.



Fig. 2.



Fig. 3.



INVENTORS

FRANK NORTON WATSON  
EDWARD WATSON

BY THEIR ATTORNEYS

William M. Myers

899

Handwritten signature or mark.

Patented June 14, 1927.

1,632,398

## UNITED STATES PATENT OFFICE.

FRANK BRUCE WATSON and EDWARD OLIVER, OF LONDON, ENGLAND, ASSIGNORS  
TO UNITED KINGDOM OPTICAL COMPANY, LIMITED, OF LONDON, ENGLAND.

L2888

Application filed November 21, 1925, Serial No. 75,285, and in Great Britain April 20, 1925.

This invention relates to lenses particularly those which are used with spectacles and the like.

In the manufacture of fused lenses as is usually practiced a circular plate of glass of greater refractive index than that of the main lens is fused into the main lens. It is found in practice that the lower part of the plate is little if at all used for reading purposes and it is the lower portion which prevents the wearer from seeing the ground. It has also been found that the upper portion of the plate is little if at all used in reading and that the eye adjusts itself to the use of a comparatively narrow part of the circle which is of greater width, that is to say a part on each side of the horizontal diameter of the circle.

According to this invention we form a plate of glass of a plurality of pieces of different refractive indices, that is to say of pieces of glass one of which is suitable for forming a reading portion and the other portion or portions have substantially the same refractive index as that of the main lens.

Thus we may use two pieces of glass one of which, the upper portion of the plate generally being of greater refractive index than the lower and suitable for forming a reading portion. Preferably however the plate is made in three parts, a central portion and two segments. The central portion has a refractive index greater than that of the other portions and is suitable for forming a reading portion.

In making a lens the central portion and the two segments are fused together to form a circular plate of glass, the edges of the central portion and the segments being grey and unsupplied in order to prevent the grinding lines between them being reflecting. The plate of glass is secured to the main lens in any usual manner, for instance the plate is fused on to the main lens and then ground and polished.

In the accompanying drawings Figures 1 and 2 are plans of two lenses made in accordance with this invention; and Figure 3 is a plan view of the completed lens.

a is the main lens or spectacle. In Figure 1 b is a circular plate formed of two

parts c and d, the part c being of greater refractive index than the part d, and is suitable for reading, whilst the part d has substantially the same refractive index as the lens a. In Figure 2 the circular plate b is formed in three parts, one part e having a refractive index greater than the two segments f, g, whose refractive index is substantially the same as that of the main lens.

The edges of the parts of the plate b are left grey and unsupplied to prevent their becoming reflecting surfaces, and are fused together and the plate so formed is fused to the main lens. By counterboring we mean a glass blank having a cut-away portion adapted to receive the insert or inserts. By usual or a usual insert we mean an insert having a spherical surface and having a top and bottom consisting of sides, formed in parallel planes.

What we claim is:—

1. A lens consisting of a main lens, a glass plate secured to the main lens consisting of three pieces of glass made of a central portion and two segments, the central portion having a refractive index suitable for reading whilst the two segments have the same refractive index as that of the main lens.

2. In a fused bifocal lens, a counterbore of one refractive power and a fused usual insert of a different refractive power.

3. In a fused bifocal lens, a counterbore of one refractive power, a fused insert of a different refractive power having a relatively wide lateral field of vision, the vision field above and below and insert being relatively large as compared with its extent on either side of said insert.

4. In a fused bifocal lens, a counterbore of one refractive power and a fused usual insert of a different refractive power, said insert having rounded edges where such edges join said counterbore to said counterbore.

5. A bifocal lens, consisting of a main lens and a fused usual field of vision field above and below said main lens being relatively large as compared with its extent on either side thereof.

In testimony that we claim the foregoing as our invention we have signed our names this 21st day of October, 1925.

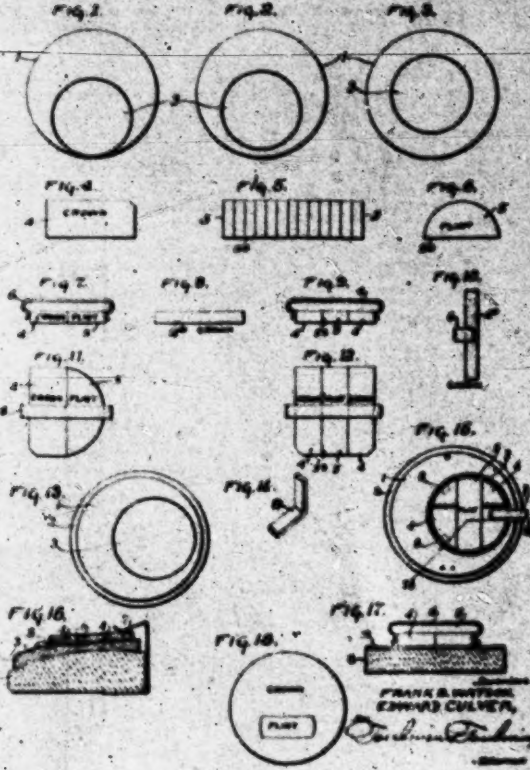
FRANK BRUCE WATSON  
EDWARD OLIVER

900

Oct. 1, 1929.

F. B. WATSON ET AL.  
METHOD OF MAKING DIPLOCAL LENSES  
Filed Feb. 26, 1927

1,728,854



FRANK B. WATSON  
EDWARD CULVER,  
Attorneys

901

Patented Oct. 1, 1929

1,729,654

## UNITED STATES PATENT OFFICE

FRANK B. WATSON AND EDWARD CULVER, OF LONDON, ENGLAND, ASSIGNORS TO  
UNITED KINGDOM OPTICAL COMPANY, LIMITED, OF MILL HILL, LONDON, ENGLAND

## METHOD OF MAKING BIPOCAL LENSES

Original application filed November 21, 1925, Serial No. 70,586, and in Great Britain April 20, 1925,  
Divided and this application filed February 28, 1927, Serial No. 171,817.

Our invention relates to a method of manu-  
facturing fused bifocal lenses.

It is the object of our invention to pro-  
vide a method of fusing bifocal lenses so  
that the fused inserts may be positioned at  
varying positions relative to the main lens  
or counter sink not distorting the variation  
in form and size of the insert with respect to  
the counter sink portion of the main lens.

It is a further object to provide a method  
of manufacturing such lenses so that they  
will be accurately positioned initially when  
the fusing starts, and will be automatically  
maintained in the accurate position desired  
during the fusing, so that the resulting lens  
will be accurately formed.

It is a further object to provide such steps  
in our method that the resulting lenses will  
be homogeneous, and mechanically and  
optically perfect, despite the fact that they  
are produced in quantities.

This application is a division of applica-  
tion Serial No. 70,586, filed November 21,  
1925.

Referring to the drawings:

Figure 1 is a plan view of a counter sink  
with the circular depression for receiving  
the button located near the margin of the  
counter sink;

Figure 2 is a similar view with the depres-  
sion located nearer the center of the counter  
sink;

Figure 3 is a view showing the counter sink  
depression and the counter sink itself  
geometrically centered;

Figure 4 is a plan view of the in-  
serts constituting a portion of the button,  
such as the crown insert;

Figure 5 is a side elevation of a group of  
flat sections joined together for uniform  
polishing and finishing on the edges thereof;

Figure 6 is a semi-circular section of one  
of the flat button sections;

Figure 7 is a side elevation of a pair of  
button sections held together by a clip for  
fusing;

Figure 8 is one side of one of such sections  
showing the gray edge thereof on the crown  
portion;

Figure 9 is an end elevation of a series of

sections constituting the button being held  
in position for fusing, the center section being  
flat and the side sections being crown on the  
sides of the flat section of the button;

Figure 10 is a side elevation thereof show-  
ing the gray edge of the crown sections;

Figure 11 is a plan view of Figure 7;

Figure 12 is a plan view of Figure 9;

Figure 13 is a view of the counter sink  
mounted on a carbide-rundum slab;

Figure 14 is an enlarged side elevation of  
a feeder;

Figure 15 is a plan view of the carbi-  
de-rundum base, counter sink, button, clip and  
feeder in position;

Figure 16 is a section on the line 16-16 of  
Figure 15;

Figure 17 is a side elevation of the carbi-  
de-rundum slab used for fusing the segments to  
one another, with a clipped assemblage of  
button segments thereon.

Figure 18 is a plan view of the completed  
lens.

Referring to the details of our method, we  
prepare molded blanks of crown glass 1, pre-  
ferably of index 1.5232, ground and smoothed  
in order to fit carbide-rundum slabs 2.

We then grind the counter sink to the circular  
depression 3 in any one of the locations  
shown in Figures 1, 2 and 3 depending upon  
the position of the inserts as desired in the fin-  
ished lens.

In heating these depressions, we keep in  
mind that we desire the finished product to  
have a single geometrical optical center for  
both distance and reading portions as near as  
may be possible, although this is not essential  
because many of our lenses are not so ar-  
ranged.

One of the fundamentals of our invention  
is to provide these counter sink portions with  
a polish very much finer and more accurate,  
absolutely free from any pitting.

Heretofore, a good felt polish finish has  
been sufficient, but we find it necessary to use  
a material consisting of flint pitch and wax  
so as to insure the depressions being abso-  
lutely free from holes or what is known as  
curdly surface, thereby eliminating any va-

902

2

1,725,054

reasons which might make the fusing imperfect.

We then take the segments, which consist into the bottom, the exact proportion of which is hereinafter explained, and assemble these segments either in combinations of one semi-circular flint segment 3 and one oblong crown segment 4, or two oblong crown segments and one oblong flint segment.

We prefer to have the edges of the crown segment unpolished or gray, as indicated at 4 in Figure 8, or Figure 10.

As to the flint segment, one edge is a then ground plane and finished until it is a constant free from any small pits. It is desirable to have this finished with this uniform surface, but not highly polished so as to avoid any light reflections which would result from high polishing, i. e. it is given a semi-polish where it meets the crown segments.

It will be understood that the gray appearance of the joining edges of the crown glass segments, and the semi-polished appearance of the joining edges of the flint glass segments, due to scattering of light reflections, the gray being due to the glass microscopic projections resulting from grinding, and the semi-polish to fine and smoother projections.

The grinding of the crown glass edges is very important as an aid to the solution of two of applicants' problems in carrying out this invention; viz. that of minimizing the optical prominence in the finished lens of the lines between the major and minor elements, and that of reducing the difference in time between the arrival at welding fusion of the flint glass edges and the crown glass edges, due to the higher fusion point of crown glass.

When the gray edge of a crown glass segment is clipped firmly against the semi-polished edge of a flint glass segment, there is necessarily a degree of meshing together of the microscopic projections, such as might be the case if two wire brushes, one with short and the other with long wires, were stuck together, and upon fusion the overlapping projections would fuse together into a fine line of glass of intermediate refractive index, transition of the sight through which, from lens to lens, would be optically less abrupt than if the two segments were in direct contact. Moreover, because of free access of heat to the relatively long projections constituting the gray edge, the gray edge would fuse more quickly than the main body of the crown glass segment, thus lowering the danger of excessive distortion producing fusion of the flint glass segment. To effect safe fusion of the two kinds of glass, with their contacting edges finished as described, approximately fifteen minutes has been found, by experiment, to be the best time at the temperature made use of (620 deg C.), as will be later explained.

The flint portion of the segment should be an extra dense flint with an index of 1.58 to 1.602, and of a thickness of 1/16 inch. These flint portions of the glass are cut into oblong slabs 5. The sides are smoothed plane and they may be assembled into groups with terminals 6. Figures 9 and 10 show the finished parts. A good wax may be used. The top and bottom edges are then ground and reduced to approximately 9/16 millimeters, with both sides parallel and smoothed finely, so that there are no pits.

They are then lightly polished with a pitch polish which keeps them free from abrasion and which does not form small pits as with the ordinary felt polish.

They are then cleaned with a solvent and dried with a cloth of such a character that it does not leave any lint or threads on the surface.

We join the edges of these segments by holding them together in a clip 6 and fusing them together. This fused bottom shown in Figure 11, 12, or 13, consisting of a portion of crown glass and a portion of flint glass, is located in the depression 7 of the counter sink 8, which is mounted on the carbonium base 2. It is held in position by a clip 7, which engages the top of the bottom and the bottom of the carbonium slab.

In order to position the bottom in the counter sink, we provide angled feelers 8, one portion of which is below the bottom and the other portion of which is against the edge, which feelers serve to hold the bottom in position and completely seat into the lens without injuring it, through the fusing process, and thereby provide means of positioning the lens and compensating for the conditions which occur through fusing, so that the insert will not be displaced. This also feeler is later removed by grinding.

We find that, due to holding the bottoms in position by means of the spring clips with very slight pressure, that this has a slight tendency to raise one end or side of the segment from the counter sink with the ultimate result of imperfect fusing caused with imperfect contact unless feelers are used.

These feelers, when placed in proper position in the counter sink of the main lens, hold the flint insert away from the counter sink, permitting it to drop evenly for perfect fusing. These feelers are sheet zinc and will melt before the fusing temperature is high enough for this flint insert to drop.

The combination as shown in Figures 15 and 16 is then inserted in the furnace, preferably in an electric furnace, and the temperature raised to about 700 degrees centigrade and kept at that temperature for about fifteen minutes.

The furnace is then allowed to cool about fifty degrees in the next thirty minutes, whereupon the current is shut off and the

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lenses and in the shaped furnace gradually for a period of about fifteen hours.

It will be understood that the crown portions of the bottom are of the same refractive index and expansion as the convex side or distance portion. They are also preferably of the same material as the convex disk in order that there shall not be the slightest depression or variation in the lenses as a finished product because the crown portions must be fused homogeneously.

The glass used in all finishing operations are made of fused silica or other similar non-reflective material.

Care must be taken to prevent any dust between contact surfaces as this will result in air bubbles.

The segments are now slanted or ribbed to circles as large as possible and one side is lightened plane. They are turned then to the other side where the contact curve is ground as desired.

Great care must be exercised in not having the slightest rounding or aberration at the dividing lines which would render the combination useless for fusing to the counter sink.

In order that the accuracy of the fit between the bottom and counter sink may be understood, it is desirable and essential that the segments must be nearly the same by color content, which is a most exacting method of testing curvature.

In preparing the segments, it is desirable to leave one edge, that in the outer edge, quite rough so that it may be readily distinguished from the contact side which engages with the other portion of the segment.

This refers to the crown portions of the segments.

It will be understood that the construction shown in Figures 7 and 9 and Figures 11 and 12, when assembled, are placed in the furnace which is raised to 600 degrees centigrade and kept there at that temperature for about 15 minutes before being allowed to slowly cool.

During the heating, they are mounted on carbonadium slabs which are dusted with powdered silica to prevent the soft glass from sticking.

It is after this time that the resulting bottom has imparted to it the curvature of the bottom shown in Figure 13. The side on which the mix has been placed should be lightened plane and fairly well polished, but no special care is necessary as to the holes or rounding.

The other side is then worked to the proper curvature to fit in the counter sink.

When the fusing takes place, the bottom sections drop together as a unit so as to fit perfectly in the depression; the crown portions of the bottom fuse into the convex surface and the whole becomes an internal unit there being a visible, but not optically objectionable line of division between the first

segment and the crown construction. Obviously, after the fusion, the outer edge of the first segment may be changed to obtain properly in the construction of the desired lens.

It will be understood that we desire to emphasize within our invention such modification as may be necessary to adapt it to varying conditions and uses.

Having thus fully described our invention, what we claim as new and desire to secure by Letters Patent, is—

1. In a method of forming a bottom for insertion in a lens, providing a crown portion, forming a gray shading edge thereon, forming a flat glass portion with semi-polished shading edge, supporting said crown plate and flat glass portion with their shading edges in close contact whereby no relative lateral or vertical slipping will take place between the portions during fusion with resulting low visibility of the line of union of the segments, and fusing said portions together.

2. In a method of making lenses, assembling a crown portion having a gray shading edge and a flat portion having a semi-polished shading edge, holding the portions to one another, placing them on a support not affected by heat, placing them in a furnace on the support, fusing in said furnace at 600 degrees centigrade for fifteen minutes and allowing to cool in the furnace for approximately fifteen hours.

3. The method of wetting segments of glass of different refractive index edge to edge so as to secure low visibility of lines of union of said segments, consisting in fusing each shading edge of segments of lower index with a semi-polish, forming each edge of segments of higher index with a finish rougher than that of subedges of segments of lower index, holding in firm contact with each other corresponding edges of segments of different index, and fusing said edges together.

4. In lens manufacture, the method of making bottom of joined segments of optical glass, which consists in surface grinding, each shading edge of segments of higher index, finishing each shading edge of segments of lower index to a unit, non-light-reflecting surface, without rounding or other aberration, clamping together corresponding shading edges of segments of low index and high index, supporting said segments against relative movement, heating said assembly in a furnace to about 600 degrees centigrade for about fifteen minutes, slowly cooling said furnace with said assembly therein for about fifteen hours.

5. In a method of making segments of glass of different indices of refraction having different melting points, imparting to

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and segments roughened edges, joining said edges and facing said segments as joined on said edges while supporting said segments without movement.

4. In a method of making segments of glass of different indices of refraction having different working points, imparting to said segments roughened edges, joining said edges, facing said segments as joined on said edges
5. while supporting said segments without movement, and heating said segments to fuse them at such temperature for such time as to bring about fusing on the edges without distortion of the segments and without relative
6. slipping.

7. In a method of making segments of glass of different refractive indices edges to edges as to secure low visibility of lines of union of said segments without distortion,
8. forming each working edge of the segments with a rear polished surface of different degree of polish, and facing said segments one to the other.

In testimony whereof, we affix our signatures.

W. RANK B. WATSON.  
EDWARD CULVER.

905

Sept. 8, 1931.

F. J. G. B. WATSON ET AL.

1,822,606

METHOD OF MANUFACTURING LENSES AND APPARATUS THEREFOR

Filed Nov. 24, 1928

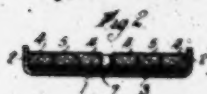
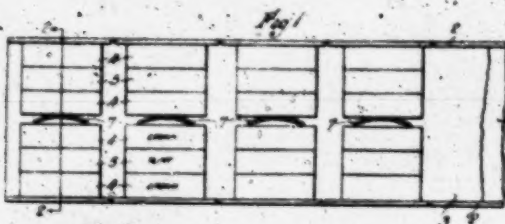


Fig. 7



Fig. 6



Fig. 5



Patented  
F. J. G. B. Watson, George B. Watson  
Edwin H. Brown  
By *Wm. H. Brown* Attorney

906

Patented Sept. 2, 1921

1,322,606

## UNITED STATES PATENT OFFICE

FRANCIS JOHN GEORGE BRUCE WATSON, OF INGLETON, LONDON, EDWARD CULVER, OF CROOKEN AND LONDON, AND ALFRED HENRY SHERWOOD, OF STURLEY, LONDON, ENGLAND; ASSIGNORS TO UNITED KINGDOM OPTICAL COMPANY, LIMITED, OF LONDON, ENGLAND

## METHOD OF MANUFACTURING LENSES AND APPARATUS THEREFOR

Application filed November 24, 1919. Serial No. 58,486.

Our invention relates to an apparatus and method of manufacturing lenses.

In particular it is our object to provide a method of manufacturing bifocal lenses with a minimum of loss, by reason of the presence of air bubbles, reflecting surfaces, warping and the like.

It is a further object to provide a method and means of fusing parts of the button together and of fusing the buttons to countersinks, so that parts used for this purpose will not bring about warping, twisting or displacement of the parts one to the other, so that the feeders and the means used for maintaining the feeders in position will disappear and whatever parts are remaining can be eliminated in the finished product by grinding.

The invention with its various novel features is illustrated in the accompanying drawings with reference to which it will now be described.

Referring to the drawings:

Figure 1 is a plan view of a plurality of unfused buttons ready for introduction into the furnace to be fused.

Figure 2 is a section on the line 2-2 of Figure 1 looking in the direction of the arrows.

Figure 3 is a top plan view of a countersink with an unfused button in position.

Figure 4 is a section (enlarged) on the line 4-4 of Figure 3.

Figure 5 is a side elevation of one of the crown strips or sections of the button showing its groy edge.

Figure 6 is a top plan view of the fused countersink and button after grinding.

Figure 7 is a detail perspective of the small feeder enlarged.

Figure 8 is a section through the countersink in its final fused condition on the line 8-8 after fusing and grinding.

Figure 9 is an enlarged detail section showing the application of adhesive and feeders to the button and countersink.

Referring to the drawings in detail, 1 is the bottom of a trough like tray having side walls 2. This tray is of metal. On the bottom of the tray is located a strip of asbestos

3. Between the side walls of the tray and upon this asbestos strip 3 we locate groups of flint and crown glass pieces or strips which when fused and trimmed round constitute a button. These groups can be in single or double rows with spring pressure in centre or on one side. The crown strips are designated 4 and the flint intermediate strip is designated 5.

This strip 5 later becomes the fused zone insert that appears in the final lens as a part of the countersink 6 (see Figure 6). These groups of strips to form the buttons are oppositely disposed to one another and are spring pressed outwardly or otherwise positioned by the spring 7.

The metal tray composed of the parts 1 and 2 carrying the strips to be fused is then placed in a furnace where it is heated for an appreciable period of time of approximately 15 minutes at approximately 550° C. temperature. Upon being withdrawn the fused square buttons are removed and trimmed to circular form as in Figure 3, the edges appearing as at 9. The undersurface of the button is ground to a convex shape indicated at 10, corresponding to the concave portion 11 of the countersink. (It will be understood that the under surface of the button might be concave corresponding to a convex surface of the countersink). The button is so positioned above the countersink concavity 11 that when heated it will drop down without warping and twisting and will be completely fused without bubbles, or other defects, which would impair the value of the resulting lens.

To accomplish this we utilize thin feeders 12 of zinc or other soft metal. Instead of metal feeders there may be employed feeders formed of suitable metal oxides, or powder mixed with gum or other material adapted to collapse at a predetermined temperature. We locate the feeders preferably as indicated so that one edge of the button rests upon the end of the concavity of the countersink while the other edges of the button are suspended above the countersink by the feeders 12 for a purpose hereinafter described.

In order to position these feeders and main-

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tain them in proper position with respect to the bottom and the countersink, we use a cement. The feeders are touched with cement as well as the opposite edges of the bottom, the cement being designated as 12. This serves to cement the feeders to the countersink and bottom so as to hold the several parts in position. While the cement is drying, we employ a spring 14 to hold the parts in position. When the cement is dry, this spring is removed and the countersink and bottom can be easily handled.

The countersink and bottom, which are not yet fused, may then be placed on a suitable carbonaceous slab in the usual way in the metal trough having the bottom 1 and side walls 2 and again inserted in the furnace. The temperature is then raised to 750° C. approximately for about 15 minutes approximately. Our object is to permit of a progressive fusing of the bottom from the point where it touches the countersink in the direction of the feeders, so as to exclude the air beneath the bottom and between it and the countersink, so that there will be no air bubbles caught between the bottom and the countersink.

The temperature is then allowed to fall gradually for annealing purposes. This is a very important step in connection with the manufacture of this type of lens which we have found to be especially adaptable to its peculiar requirements.

Where the dispersion curve is very deep we may use feeders made of harder metal.

We prefer that the inside side walls 13 of the crown mould or strips 4 to have a partly finished or gray edge 15 so this prevents reflection from this edge in the final lens.

It will be understood that we desire to comprehend within our invention all the modifications necessary to adapt it to varying conditions and uses.

What we claim is—

1. In an apparatus for fusing countersinks, a metallic trough, a strip of inert material on the bottom of the trough such as asbestos, and yielding means adapted to be interposed between groups of pieces of glass to be fused into bottom, to force yieldingly said groups outwardly across the side walls of the trough.

2. In the art of manufacturing fused lenses, a new article of manufacture for curing lenses during fusing, consisting of a trough of metal having side walls, a strip of material on the bottom thereof, upon which the lenses rest and which is not affected by the heat of the furnace, and yielding means for maintaining the lenses against the side walls to accommodate the expansion and contraction of the parts while at the same time maintaining the lenses in a predetermined position.

3. In combination in the manufacture of a lens, a countersink, a bottom, soft metal feeders

interposed therebetween, and cement applied to said feeders for engagement with the bottom and countersink.

4. In combination in the manufacture of a lens, a countersink, a bottom, and fusible metal feeders positioned and adapted to hold the bottom out of contact with the countersink except at one place.

In testimony that we claim the foregoing as our invention we have signed our names to this 25th day of October, 1924.

WILLIAM JOHN GILBERT STUART WATSON,  
GEOFFREY CHAMBERLAIN,  
ARTHUR STUART GILBERT.

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Feb. 18, 1922.

W. M. STANLEY

1,845,940

LENS

Filed Sept. 2, 1920

Fig 1



Fig 2



Fig 3

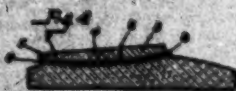


Fig 5



Fig 7



INVENTOR  
W. M. STANLEY

ATTORNEY

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Patented Feb. 16, 1932

1,845,940

## UNITED STATES PATENT OFFICE

NATHAN W. STANLEY, OF DAYTON, OHIO, ASSIGNOR, BY HISSE'S ASSIGNMENTS, OF ONE-HALF TO THE UNIVIS CORPORATION, OF WILMINGTON, DELAWARE, A CORPORATION OF DELAWARE, AND ONE-HALF TO UNITED KINGDOM OPTICAL COMPANY, LIMITED, OF LONDON, ENGLAND

LENS

Application filed September 2, 1929. Serial No. 629,192.

My invention relates to lenses for eye glasses.

It is the object of my invention to provide an insert in a main lens for near distance vision, which insert will have a flat top, a shorter flat bottom and rounded edges providing the following advantages:

(1) The elimination of vertical prismatic displacement.

(2) The elimination of distortion of vision at the top of the insert.

(3) The provision of an extremely wide lateral field at the top of the insert.

(4) The provision of a controlled optical center of the insert.

(5) The provision of a lens with a space between the optical center of the main lens and the insert of a greater width than the width of the pupil of the eye.

(6) The elimination of the distorted area at the extreme bottom of the insert while providing full vision on either side of the insert.

(7) The provision of a wider field of vision at the bottom of the insert without distortion at that point.

(8) The provision of an insert above, to either side and below which long distance vision can be secured.

(9) The provision of a very deep near vision without distortion at either the top or the bottom.

Heretofore the difficulty with the insert in a main lens has been that, when sufficient width of the insert has been secured, distortion at either the bottom or the top resulted or there was vertical prismatic displacement. On the other hand if this were corrected, there was an increased field of near vision and far vision.

It is an object of my invention to provide a lens combination in which all of the advantages necessary are to be had without one of the disadvantages heretofore to the art.

Figure 1 is a top plan view of the main lens with a circular depression in the center.

Figure 2 is a plan view of an insert of the invention with a flat top, a shorter flat bottom and rounded edges.

Figure 3 is a top plan view of the insert in position on the main lens.

Figure 4 is a section on the line 4-4 of Figure 3.

Figure 5 is a top plan view of the finished lens.

Figure 6 is a section on the line 6-6 thereof.

Figure 7 is a top plan view of a modified form of finished lens; and

Figure 8 is a section on the line 8-8 of Figure 7.

Referring to the drawings in detail, 1 is a main lens having a circular cutaway portion with a semi-circular bottom, as at 2. The main lens is made of crown glass adapted for long distance vision.

The insert is shown in Figure 2 and consists of a crown portion 3, a flat portion 4 and a crown portion 5. The flat portion has a flat top 6 and a flat bottom 7 for receiving the corresponding flat surfaces of the respective crown portions 3 and 5. The insert is mounted upon the usual feeders 8 and is fixed to the main lens with the result that the crown glass disappears into and becomes amalgamated with the crown glass of the main lens bearing the insert 1 having a flat top 6 and a flat bottom 7. The insert 4 has its curved sides 9 laid out about the center 10. The diameter of this circle, of which the insert as a part, is less in length than the diameter 11. The top 6 is greater than the length of the bottom 7 while the bottom 7 is less than the diameter 11. The vertical dimension indicated by the line 12 of the insert is less than the diameter 11.

By cutting off the bottom of the insert the depth of vision is substantially preserved while the distorted area at the bottom of the insert is eliminated. Ample vision for long distance is provided in one form where desired below the insert as at 13.

The side 14 of the insert coincides with the axis 15 of the main lens. The top 6 of the insert is parallel with the horizontal diameter 16 of the main lens. 17 designates the center of the main lens.

It will be further noted that there is ample

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vision on either side of the insert and that, due to the flat top of the insert, vertical prismatic displacement has been eliminated and all distortion is eliminated so that the vision of the eye can pass without disturbance from long distance to near distance, and vice versa.

The radius of the insert is, of course, one-half the length of the diameter line 11.

It will be understood that I desire to comprehend within my invention such modifications as may be necessary to adapt it to varying conditions and uses.

Having thus fully described my invention, what I claim as new and desire to secure by Letters Patent, is:

1. In a lens, a major lens and an insert of higher index glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top and a flat bottom of different lengths; the vertical dimension of said insert being greater than the radius of the circle but less than the diameter of the circle.

2. In a lens, a major lens and an insert of different glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top and a flat bottom, the vertical dimension of said insert being less than the diameter thereof and greater than the radius thereof, said flat top being longer than said flat bottom.

3. In a lens, a major lens and an insert of different glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top and a flat bottom of different lengths, the vertical dimension thereof being greater than the radius of the circle of the insert but less than the diameter thereof, said insert being spaced from the bottom of said walls of the major lens to permit vision on either side and below as well as above the insert, without distortion and displacement when passing from one portion of the lens to the other.

4. In a lens, a major lens of one kind of glass, a circular insert of another kind of glass having its top cut off above the major diameter thereof and parallel therewith, and its bottom cut off parallel with the top of the insert, the vertical dimension of the insert being less than the diameter but greater than the radius of the insert, said insert being located with its flat top and bottom parallel to and spaced from the horizontal center line of the major lens, said insert being located on the major lens above the bottom thereof, below the center thereof and spaced from the sides thereof so that vision through the main lens can be had on all sides of the insert lens.

5. In a lens, a major lens of crown glass having a circular cutaway portion forming a semi-circular depressed space from the bottom, side walls and top of the major lens, a circular insert located within said depress-

ion comprising a central portion of flint glass bounded by chords of different lengths above and below the diameter of the insert, said central portion having a vertical dimension less than the diameter of the insert but greater than the radius thereof, and crown glass sections completing the insert on either side of the central portion.

6. In a lens, a major lens, an insert therein, said insert having a flat top and a flat bottom of lesser length than the top, the vertical dimension of the insert being less than the diameter of the segment but greater than its radius and the flat bottom being approximately equal to the radius.

7. A new article of manufacture for use as a short distance insert of a crown glass major lens comprising a circular body formed of a central portion of flint glass separated from upper and lower portions by chords on opposite sides of the center of the insert, the upper chord being longer than the lower chord, and the vertical dimension of said flint insert being less than the diameter of the insert but greater than the radius thereof, the portions of the insert above and below said chords being of crown glass and adapted to merge into the main lens.

8. In a lens, a major lens and an insert of different glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top and flat bottom, said top and bottom being of different lengths, the height of the insert between the faces being greater than the radius forming the circle but less than the diameter thereof.

9. In a lens, a major lens of one kind of glass, a circular insert of another kind of glass having its top cut off above the major diameter thereof and parallel therewith, and its bottom cut off parallel with the top of the insert, but at a greater distance from the center of the insert than the top is from the center of the insert and below the major diameter.

10. In a lens, a major portion with a countersink having a lens surface therein and a segmental portion of a different index of refraction secured in said countersink and related to said lens surface of the countersink for near vision through the segment and underlying major portion, said segmental portion having a flat top and a flat bottom of different lengths on opposite sides of the diameter of the segmental portion and circular side walls, the flat top being substantially parallel to the diameter of the major portion and below it while the center of the segmental portion coincides with the vertical axis of the major portion.

In testimony whereof I affix my signature.

NATHAN M. STANLEY.

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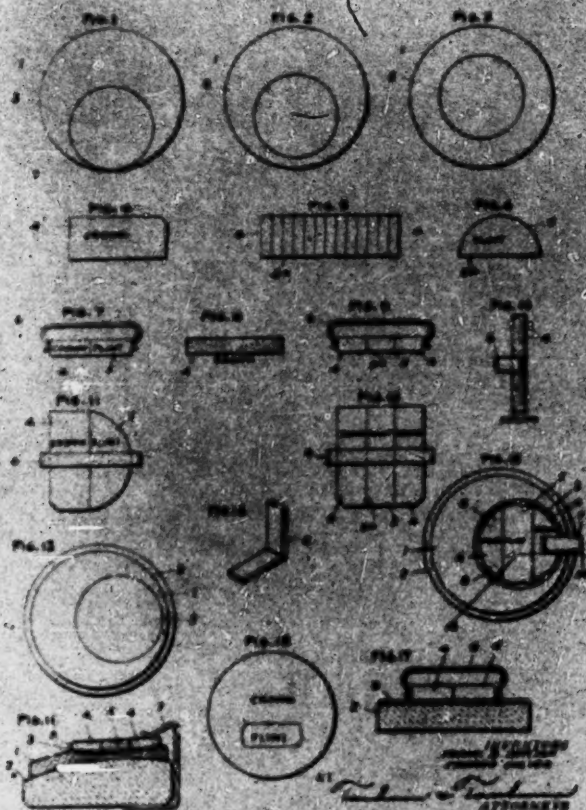
July 26, 1932

F. B. WATSON ET AL.

1,868,363

OPTICAL SYSTEMS COMPRISING OPTICAL LENSES

CLAIMS: FIG. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000



912

Patented July 25, 1933

1,593,933

# UNITED STATES PATENT OFFICE

FRANK E. WATSON AND HERBERT WATSON, BY LAWRENCE EDWARDS, ATTORNEYS AT LAW, WASHINGTON, D. C.

UNITED STATES PATENT OFFICE

RECEIVED SEPTEMBER 25, 1933. FILED SEPTEMBER 25, 1933. OFFICE OF THE COMMISSIONER OF PATENTS AND TRADE MARKS, WASHINGTON, D. C.

- This invention relates to a method of manufacturing lensed optical devices.
- It is the object of our invention to provide a method of forming lensed lenses so that the lensed surface may be produced at varying positions relative to the main face or surfaces, without necessitating the variation in both end size of the lens with respect to the main surface of the main face.
- It is a further object to provide a method of manufacturing such lenses so that they will be accurately positioned initially when the lensing starts, and will be automatically maintained in the accurate position desired during the process so that the resulting lens will be accurately formed.
- It is a further object to provide such steps in our method that the resulting lenses will be homogeneous and substantially and optically perfect, despite the fact that they are produced in quantities.
- This application is a division of application Serial No. 11,241, filed February 15, 1932.
- Referring to the drawings:
- Figure 1 is a plan view of a lensed lens with the circular depression for receiving the lensing located near the margin of the main surface.
- Figure 2 is a similar view with the depression located nearer the center of the main surface.
- Figure 3 is a view showing the lensed depression and the main surface held optically centered.
- Figure 4 is a plan view of one of the lenses constructed in a portion of the lensing, with the lensing.
- Figure 5 is a side elevation of a group of lens sections joined together for uniform polishing and finishing on the outer surface.
- Figure 6 is a cross-sectional view of one of the lensed sections.
- Figure 7 is a side elevation of a pair of lens sections held together by a clip for finishing.
- Figure 8 is one side of one of such sections showing the gray edge thereof on the convex surface.
- Figure 9 is an end elevation of a series of
- lenses, constructed in the manner being held in position for finishing the outer surface being flat and the side surfaces being curved on the sides of the flat surface of the lenses.
- Figure 10 is a side elevation showing the gray edge of the convex surface.
- Figure 11 is a plan view of Figure 1.
- Figure 12 is a plan view of Figure 1.
- Figure 13 is a plan view of Figure 1.
- Figure 14 is an enlarged side elevation of a lens.
- Figure 15 is a plan view of the lensed depression, with the lensing, clip and clip on in position.
- Figure 16 is a section on the line 16-16 of Figure 15.
- Figure 17 is a side elevation of the lensed depression held until for finishing the depression in one position, with a stepped arrangement of lenses against the lens.
- Figure 18 is a plan view of the completed lens.
- Referring to the details of our method, we provide a mold made of glass, glass 1, and made of metal 1,000, ground and finished in order to fit the depression 2.
- We then grind the lensed surface to the circular depression 2 in any one of the lensing shown in Figures 1, 2 and 3 depending upon the position of the lensing as desired in the finished lens.
- In finishing these depressions, we keep in mind that we desire the finished product to have a single geometrical optical center for both distance and reading portions so that it may be possible, although this is not essential, to have any of our lenses are not so arranged.
- One of the fundamentals of our invention is to provide these lensed portions with a polished very much finer and more accurate, absolutely free from any polish.
- Therefore, a good flat polished disk has been indicated, but we find it necessary to use a material consisting of glass, glass and wax so as to know the depression being absolutely free from holes or what is known as cavity centers, thereby obtaining any

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variation, which might make the flying one  
a subject.

We then take the arguments, which constitute the basis, the exact propositions of which are hereinafter explained, and assemble these arguments either in combinations of one or more similar first arguments and one oblique compound argument, or in combinations of two oblique compound arguments and one oblique first argument.

10 We prefer to have the edges of the cylinder  
ground, as desired in Fig. 1, to be installed as  
40 in Figure 2, or Figure 3.

As to the flat sections, one edge is a then ground plane and finished until it is a constant five from any null zone. It is desirable to have this finished with the same surface - but not highly polished as to avoid any light reflections, which would result from high polishing, i. e. it is given a roughish surface, it meets the crown, or null zone.

[illegible]

They are then lighted, dashed with a pattern of white flowers that give them a soft and delicate glow. The small pots are set in the ordinary brick path.

They are then placed within a cylinder and  
fr. (with a cloth) and each a cigarette that  
does not leave any dirt or threads on the cut  
off.

[illegible][illegible]

IN

very slight pressure that this has a slight tendency to raise one end or side of the segment from the countermark with the ultimate result of imperfect fitting caused with imperfect contact modern tools are used.

These feeders, when placed in proper position in the counter-sunk portion of the machine, hold the fluid apart away from the counter-sunk, permitting it to drop evenly for perfect fusing. These feeders are sized small and will melt below the fusing temperature, high enough for this fluid used to drop.

The combination as shown in Figures 13 and 14 is then inserted in the furnace, preferably in an electric furnace, and the temperature raised to about 740 degrees centigrade and kept at that temperature for about fifteen minutes.

The furnace is then allowed to cool about fifty degrees in the next thirty minutes after which the current is shut off and the jets are used in the closed furnace gradually for a period of about fifteen hours.

It is to be understood that the crown portions of the laminations are of the same refractive index and composition as the counter-ions of the adjacent portions. They are also preferable of the same material as the counter-ions in order that there shall not be the slightest difference of refraction in the locus of a finished product because the crown portions might be fused homogeneously.

The clamp used in all firing operations are made of Metal metal or other similar non-combustible material.

There must be taken to present any dis-  
turbance without delay or this will result  
in our failure.

The corners are now checked or squared to within as large as possible and one side is brightened plane. They are thrust then to the last side where the widest curve is checked as desired.

Expenditures exist in national and have the slightest influence or alteration a the following items which would render the expenditures useless for fighting in the country

It is noted that the accuracy of the 04.16  
between the bottom and countermark may be un-  
derestimated, it is desirable and essential that the  
approximation be nearly the same by other  
methods, which is a most exacting method of

In preparing the segments, it is desirable to make the edges flat on the outer edge, just enough so that it will be possible to interpose them in the contact zone when it comes with the other portion of the segment.

There is no further part of the

\* It is also noted that the construction shown in Figures 7 and 8 and Figures 11 and 12, when assembled, are placed in the future a hole is made in 620 degrees vertically.

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and kept there at that temperature for about 15 minutes before being allowed to slowly cool.

During the heating, they are mounted on carborundum slabs which are dusted with powdered mica to prevent the soft glass from sticking.

It is after this time that the resulting button has imparted to it the curvature of the button shown in Figure 13. The side on which the mica has been placed should be brightened plain and fairly well polished, but no special care is necessary as to the holes or rounding.

The other side is then worked to the proper curvature to fit in the counterbush.

When the fusing takes place, the button sections drop together as a unit so as to fit perfectly in the depression; the crown portions of the button fuse into the crown counterbush and the whole becomes an internal unit there being a visible, but not optically appreciable line of division between the flint segment and the crown counterbush. Obviously after the fusing, the outer edges of the flint portions may be clipped to conform roughly to the configurations of the desired button.

It will be understood that we desire to comprehend within our invention such modification as may be necessary to adapt it to varying conditions and uses.

Having thus fully described our invention, what we claim as new and desire to secure by Letters Patent, is:

1. In a process of fusing a button, joining flint and crown portions to one another, holding them in engagement with one another, mounting them on a carborundum slab covered with mica, fusing in a furnace at 650 degrees centigrade for fifteen minutes, allowing to cool in the furnace for fifteen hours, removing from the furnace, cutting the margins of the button to the desired contour and finishing the sides thereof.

2. The method of manufacturing a crown-glass major lens element, forming a button for the minor lens element by fusing together edge to edge a flint-glass segment and a crown-glass segment of like index with that of the major lens element, finishing the button on one side to fit the counterbush with optical accuracy, supporting said button on said major element at the outer edge of said cavity by contact of said button segment of like index with said major element, the remainder of said button being held separated from said major element by air space, mounting said assemblage of elements on a carborundum support dusted with powdered mica or other non-adhesive insulation, heating the whole in a furnace for about fifteen minutes at about 700 degrees centigrade, reducing the heat to about 650 degrees for about

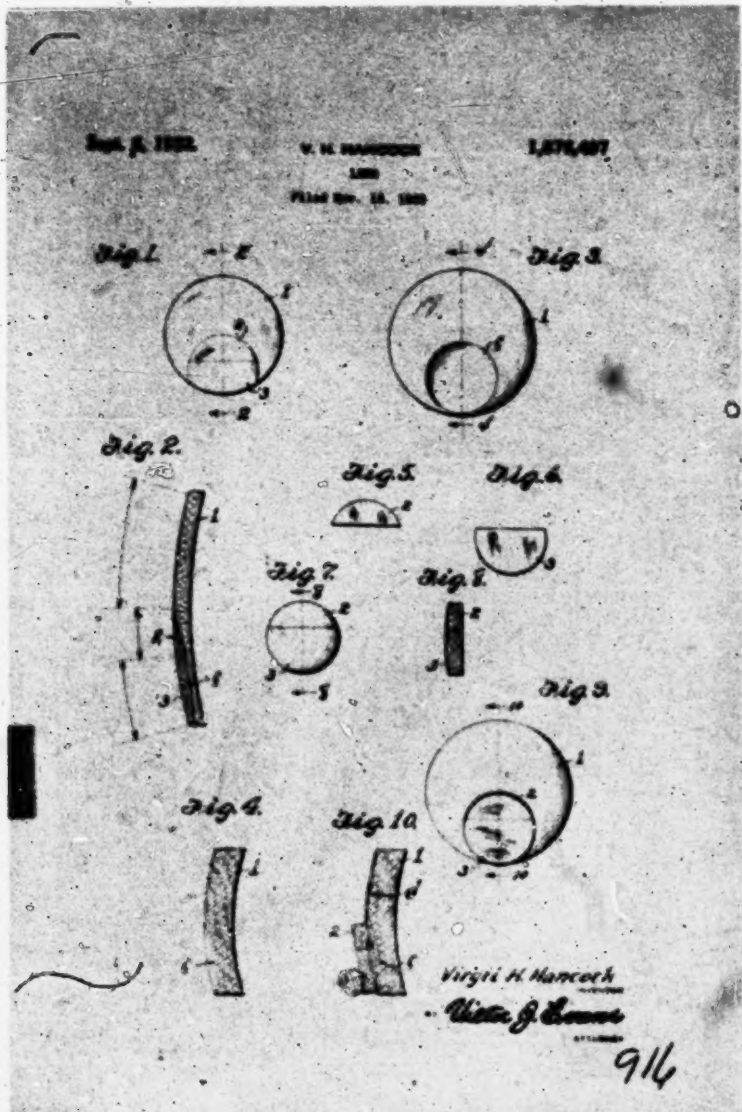
thirty minutes, and letting the lens cool and season in the furnace for about fifteen hours.

3. The method of making bifocal lenses which consists in fusing a counterbush major lens, forming a button and placing it in the counterbush on the major lens, mounting said assemblage on a carborundum support dusted with powdered mica, heating the whole in a furnace for about fifteen minutes at about seven hundred degrees C., reducing the heat to about six hundred and fifty degrees for about thirty minutes, and letting the lens cool and season in the furnace for about fifteen hours.

In testimony whereof we affix our signatures.

FRANK B. WATSON.  
EDWARD CULVER.

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Patented Sept. 6, 1922

LETTER  
ISSUED

# UNITED STATES PATENT OFFICE

THE UNIVERSITY OF CHICAGO, BY ROBERT H. ROBERTS, ATTORNEY

INVENTOR: THE UNIVERSITY OF CHICAGO, BY ROBERT H. ROBERTS, ATTORNEY

The invention relates to improvements in lenses and lens systems, and more particularly to a lens system for use in a camera or other optical instrument. The invention is embodied in a lens system comprising a plurality of lens elements arranged in a specific configuration to provide a desired optical effect. The lens system is designed to be used in a camera or other optical instrument, and is particularly adapted for use in a camera of the type in which the lens is mounted in a housing and the light rays pass through the lens elements in a specific sequence. The lens system is characterized by its unique arrangement of lens elements, which are designed to provide a specific optical effect, such as a change in the focal length of the lens system or a change in the field of view. The lens system is particularly adapted for use in a camera of the type in which the lens is mounted in a housing and the light rays pass through the lens elements in a specific sequence. The lens system is characterized by its unique arrangement of lens elements, which are designed to provide a specific optical effect, such as a change in the focal length of the lens system or a change in the field of view.

Another object of the invention is to provide a lens system which is capable of being used in a camera or other optical instrument, and which is particularly adapted for use in a camera of the type in which the lens is mounted in a housing and the light rays pass through the lens elements in a specific sequence. The lens system is characterized by its unique arrangement of lens elements, which are designed to provide a specific optical effect, such as a change in the focal length of the lens system or a change in the field of view. The lens system is particularly adapted for use in a camera of the type in which the lens is mounted in a housing and the light rays pass through the lens elements in a specific sequence. The lens system is characterized by its unique arrangement of lens elements, which are designed to provide a specific optical effect, such as a change in the focal length of the lens system or a change in the field of view.

Figure 1 is a view of a lens system in a camera, showing the lens elements and the housing. Figure 2 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 3 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 4 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 5 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 6 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 7 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 8 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 9 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 10 is a view of the lens system in a camera, showing the lens elements and the housing.

Figure 11 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 12 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 13 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 14 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 15 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 16 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 17 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 18 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 19 is a view of the lens system in a camera, showing the lens elements and the housing. Figure 20 is a view of the lens system in a camera, showing the lens elements and the housing.

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which is indexed 1.52, while the lower portion 2 is indexed 1.53.

Different indices of refraction are thus employed, the upper portion or segment 2 of the minor lens being indexed 1.52, the lower portion 3 being indexed 1.53, while the major lens is indexed 1.523. The lenses thus provided may be fused and ground with smooth or concave surfaces on both sides, the upper portion 1 providing the usual distance line, the portion 2 providing an intermediate vision lens which is adapted for use at a distance of two or three feet, while the portion 3 provides a reading or near vision lens for use at approximately fourteen inches.

For the best understanding of the preferred method of formation of the improved trifocal lens, particular attention is directed to the drawing wherein Figure 4 illustrates the major lens 1 provided with a countersink *c*. The segments 2 and 3 which are illustrated respectively in Figures 5 and 6 of the drawing may be fused together and the lens thus formed fused within the countersink *c*, or the segments may be cemented together and the lens fused into position, or the minor lens may be cemented to the major lens. After the parts have been assembled in position, it is only necessary to suitably heat the blank to soften the two parts or segments of the minor lens and permit it to become united with the major lens to form the blank illustrated in Figures 7 and 10 of the drawing.

The blank is then ground in the usual manner as indicated by the dotted line *d* in Figure 10, so that the finished lens is formed with a single continuous curve.

As before mentioned the parts may be fused or cemented, or a combination of fusing or cementing may be employed, the gist of the invention residing in the provision of glass with several indices of refraction as designed and placed within the single countersink so as to provide a trifocal lens in which the prismatic displacement has been practically eliminated from the near vision portion.

By reason of the present invention, a more practical intermediate vision portion and near vision portion results, the design and construction of the near vision portion having its optical center at the geometrical center of the minor lens as an entirety and just two and one-half millimeters below the straight edge which divides the intermediate and near vision portions. This control of the optical center of the reading portion has hitherto never before attempted in the design and construction of trifocal lenses.

The invention is susceptible of various changes in its form, proportions and minor details of construction and the right is here reserved to make such changes as properly fall within the scope of the appended claims.

Having described the invention what is claimed is:—

1. In a trifocal lens, a major lens and a circular insert set in the major lens and consisting of two segments of which one is less than a full circle with a flat top and has its vertical dimension greater than the radius of the circle but less than the diameter of the circle, the other segment being less than a semi-circle with a flat bottom and having its vertical dimension less than the radius of the circle, the major lens and the two segments each having a different index of refraction from the other two.

2. In a trifocal lens, a major lens having a single cavity and a circular insert set therein, said insert consisting of two segments of which one is less than the full circle with its vertical dimension greater than the radius of the circle but less than the diameter of the circle and its top of different outline from the outline of the remainder of the insert and the other is less than a semi-circle with its vertical dimension less than the radius of the circle and its bottom of different outline from the outline of the remainder of the insert, the major lens and the two segments each having a different index of refraction from the other two.

3. In a trifocal lens, a major lens, and a dual minor lens consisting of a circular disk insert set in the major lens below the horizontal diameter thereof and composed of but two segments having different indices of refraction, each of said segments having a different index of refraction from the major lens and the two segments being joined on a line parallel with the horizontal diameter of the major lens and constituting a chord less than the diameter of the minor lens but greater than the radius thereof, the lower segment extending to the bottom of the major lens.

4. In a trifocal lens, a major lens, and a dual minor lens consisting of a circular disk insert set in the major lens below the horizontal diameter thereof and composed of but two segments having different indices of refraction, each of said segments having a different index of refraction from the major lens and the two segments being joined on a line parallel with the horizontal diameter of the major lens and constituting a chord less than the diameter of the minor lens but greater than the radius thereof, the lower segment extending to the bottom of the major lens, the optical center of the lower segment being coincident with the geometrical center of said minor lens.

5. In a trifocal lens, a major lens, and a dual minor lens consisting of a circular disk insert set in the major lens below the horizontal diameter thereof and composed of but two segments having different indices of refraction, each of said segments having a different

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index of refraction from the major lens and the two segments being joined on a line parallel with the horizontal diameter of the major lens and constituting a chord less than the diameter of the minor lens but greater than the radius thereof, the lower segment extending to the bottom of the major lens, the optical center of the lower segment being coincident with the geometrical center of said minor lens and being positioned at least two and one-half millimeters below the line of juncture of the two segments.

In testimony whereof I affix my signature.  
VIRGIL H. HANCOCK.

0919

Sept. 27, 1932

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J. R. SILVERMAN

LENS

Filed Oct. 22, 1930

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FIG. 1.



FIG. 2.



FIG. 3.



FIG. 4.

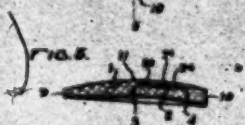


FIG. 5.



FIG. 6.



FIG. 7.



FIG. 8.



FIG. 9.



J. R. SILVERMAN

*John R. Silverman*

920

Patented Sept. 27, 1932

1,879,769

## UNITED STATES PATENT OFFICE

JACK A. SILVERMAN, OF DAYTON, OHIO, ASSIGNOR, BY HIS ATTORNEYS, OF ONE-HALF TO THE UNIVIS CORPORATION, OF WILMINGTON, DELAWARE, A CORPORATION OF DELAWARE, AND ONE-HALF TO UNITED KINGDOM OPTICAL COMPANY, LIMITED, OF LONDON, ENGLAND

LENS

Application filed October 25, 1929. Serial No. 592,300.

My invention relates to lens and, in particular, to bifocal lens.

It is the object of my invention to eliminate prismatic imbalance by controlling the position of the optical center of the reading section; and to control the optical center of a bi-centric bifocal by grinding the lens so as to change the shape of the insert, putting the prism of the insert either up or down and thereby controlling the location of the optical center.

It is my object to provide a bifocal lens with a nasal insert having a flat top and bifocal, curved sides and curved back so a standard raw cut lens blank in that only one lens blank type need be employed from which any form of prism up or down and any location of optical center can be secured by determining the lens blank and grinding the surface of the lens to the prescription required.

It is my object to provide a method of so grinding that, by converting the lens blank to the geometrical center of the main lens, that is, by pushing the lens blank towards the top of the main lens, the prism base will be placed down, the optical center of the insert will be moved downwardly, and the top dimension of the flat top of the nasal insert will be decreased in proportion to the lower side of the insert; and, when it is desired to reduce the lower side in length, place the prism up and the optical center up, then the lens blank is moved towards the lower side.

Referring to the drawing:

Figure 1 is a top plan view of a lens blank; Figure 2 is a section on the line 2-2 of Figure 1 showing the lens blank mounted upon a lens blank prior to grinding;

Figure 3 is a bottom plan view thereof; Figure 4 is a plan view of a finished lens blank with the prism down and the optical center down on the insert;

Figure 5 is a section on the line 5-5 of Figure 4;

Figure 6 is a plan view of a finished lens blank with the optical center up and the prism up;

Figure 7 is a section on the line 7-7 of Figure 6;

Figure 8 is a section through the center of the lens and as taken along the line 8-8 of Figure 4, when the lens has been ground to its final form;

Figure 9 is a section on the line 7-7 of Figure 6 when the lens has been ground to its final form.

Referring to the drawing in detail, 1 is a long distance lens and 2 a nasal insert having a flat top 3, a flat bottom 4 and rounded sides 5. This nasal insert is of the same general character as that set forth in the Watson and Culver Patent No. 1,532,358, issued June 14, 1927.

I take the raw lens blank in which the insert 2 is of a different glass from that of the main lens 1 for near vision purposes and mount it upon a lens block 3 by a layer of pitch 7.

By determining the relative position of the center 6 of the lens block with respect to the top edge 8 and the lower edge 10 of the lens blank, I am enabled to throw the prism and optical center up or down.

For instance, in Figures 4 and 5, it will be noted that the insert is thicker at 2a than at 2b and the optical center of the insert will be approximately at 2c.

Whereas, by grinding the lens to the form shown in Figures 6 and 7, the prism is up at 2a, the smaller end is at 2b, which is adjacent the lower edge 10 of the lens and the optical center 2c is up. In Figures 6 and 7, the top line 3 is longer than the bottom line 4 of the insert, whereas, in Figures 4 and 5, the top line 3 is shorter than the bottom line 4.

Thus, I am enabled by grinding the uniform nasal insert bifocal lens blank by the displacement of the lens block up and down to determine the bifocal center of the insert and the location of the prism.

By this arrangement, I am enabled to eliminate the prismatic imbalance by controlling the position of the optical center of the reading section. I control the optical center of a bi-centric bifocal by grinding the lens so as to change the cross section of the insert and thereby put the prism either up or down.

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3 The optical center of the near vision insert is located typically as follows:

In Figure 7 it will be noted that the superior and inferior surfaces of the lens blank are concentrically rounded, the curvature being generally parallel to one another.

In Figure 8 and 9 a result of the grinding it will be noted that the lens blank is only produced with an insert with the prism up or down, but the weight or distance may be likewise ground with a prism up or down corresponding to the prism ground on the near vision insert.

The final stage in the grinding of the major or distance lens blank to remove this prism and make the superior and inferior walls thereof substantially parallel, allowing the edge of the insert opposite the prism to move into the face of the finished lens and be represented by a line such as 3 or 4.

Figure 10 shows the three stages in the development of the lens, first, the raw blank comprising the long distance and near vision optical insert, second, the mounting and grinding of the near vision and long distance vision portions into prism, and third, the grinding of the lens blank so that the superior and inferior walls are substantially parallel and one edge of the insert becomes a knife edge at the superior surface of the lens.

It will be understood that I desire to be prohibited within my invention such modifications as may be necessary to adapt it to the changing conditions and uses.

Having thus fully described by invention, what I claim as new and desire to secure by Letters Patent, is:

1. In a method of eliminating prismatic imbalance, inserting a nasal near vision insert in a distance lens blank, selectively positioning the lens blank upon the lens block in eccentric relation to the center of a grinding tool, cementing the lens blank on the lens block and subjecting the lens blank and insert to the grinding action of a grinding tool as thus positioned to form a prism upon the upper or lower edge of the near vision insert and to control the position of the optical center of the near vision insert.

2. In a method of controlling the optical center of the near vision portion of a bifocal lens, having a near vision insert portion and distance portion upon a lens blank in eccentric relation to the center of a grinding tool, grinding the face of the lens, having the insert in, ground substantially flat, either edge on the other side of the insert and a straight edge on the other side on one side of the distance lens and a comparatively thin edge on the opposite side of the distance lens.

3. In a method of eliminating prismatic

imbalance, inserting a nasal near vision insert in a distance lens blank, selectively positioning the lens blank upon the lens block in eccentric relation to the center of a grinding tool, cementing the lens blank on the lens block and subjecting the lens blank and insert to the grinding action of a grinding tool by grinding the face of the lens blank and near vision insert as thus positioned to form a prism upon the upper or lower edge of the near vision insert and to control the position of the optical center of the near vision insert.

4. In a method of eliminating prismatic imbalance, inserting a nasal near vision insert in a distance lens blank, selectively positioning the lens blank upon the lens block in eccentric relation to the center of a grinding tool, cementing the lens blank on the lens block and subjecting the lens blank and insert to the grinding action of a grinding tool as thus positioned to form a prism upon the upper or lower edge of the near vision insert and a feather edge upon the edge opposite the prism edge, and to control the position of the optical center of the near vision insert.

5. In a method of eliminating prismatic imbalance, inserting a nasal near vision insert in a distance lens blank, selectively fixing in position the lens blank upon the lens block in eccentric relation to the center of a grinding tool and subjecting the lens blank and insert to the grinding action of a grinding tool as thus positioned to form a prism upon the upper or lower edge of the near vision insert, and to control the position of the optical center of the near vision insert.

6. In a method of eliminating prismatic imbalance, inserting a nasal near vision insert in a distance lens blank, selectively fixing in position the lens blank upon the lens block in eccentric relation to the center of a grinding tool and subjecting the lens blank and insert to the grinding action of a grinding tool as thus positioned to form a prism upon the upper or lower edge of the near vision insert, a feather edge upon the edge opposite the prism edge, and to control the position of the optical center of the near vision insert.

7. In a method of eliminating prismatic imbalance, inserting a nasal near vision insert in a distance lens blank, selectively fixing in position the lens blank upon the lens block in eccentric relation to the center of a grinding tool and subjecting the lens blank and insert to the grinding action of a grinding tool as thus positioned to form a prism upon the upper or lower edge of the near vision insert, and to control the position of the optical center of the near vision insert, and grinding the opposite face of the distance lens blank to make both faces substantially parallel.

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8. In a method of eliminating prismatic imbalances, inserting a base near vision insert in a distance lens blank, relatively fixing in position the lens blank upon the lens block in concentric relation to the center of the lens block with relation to the center of a grinding tool and subjecting the lens blank and insert to the grinding action of a grinding tool so then positioned to form a prism upon the upper or lower edge of the near vision insert, and a further edge upon the edge opposite the prism edge and to control the position of the optical center of the near vision insert, reversing the position of the distance lens upon the lens block to present its opposite face to the grinding tool and grinding said face to make the same substantially parallel to that of the face having the insert.

In testimony whereof, I affix my signature.

JACK R. SILVERMAN.

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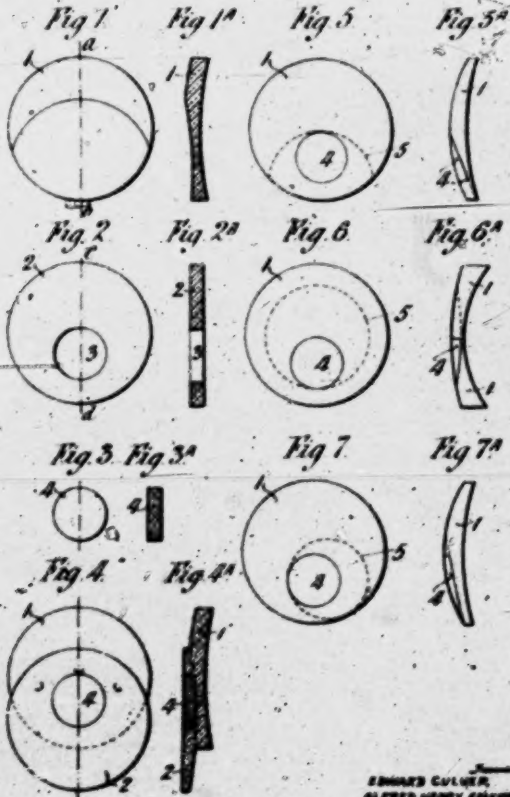
Nov. 8, 1932.

E. CULVER ET AL.

1,586,649

MANUFACTURE OF FUSED BIPOCAL LENSES

Filed May 23, 1930



EDWARD CULVER,  
ALFRED HENRY SPENCER,

924

Patented Nov. 8, 1932

1,886,649

## UNITED STATES PATENT OFFICE

EDWARD CULVER, OF CROUCH KEE, LONDON, AND ALFRED KENNY KENNEDY, OF FIDGLEY, LONDON, ENGLAND, ASSIGNORS TO UNITED KINGDOM OPTICAL COMPANY, LIMITED, OF LONDON, ENGLAND

## MANUFACTURE OF FUSED BIPOCAL LENSES

Application filed May 26, 1930, Serial No. 444,005, and in Great Britain January 26, 1930.

This invention relates to an improved method of manufacture of fused bifocal lenses.

In ordinary fused bifocal lenses the reading segment is necessarily circular. In the type of fused bifocal described in the specification of Patent No. 163,298 the segment is part of a circle the prismatic power introduced by the reading segment being controlled according to the portion of the circle that is chosen, with the result that its direction is always in the vertical; that is to say, the base of the prism, if any, introduced by the reading segment is always either base up or base down and is fixed and does not provide prism in any other direction such for example as prism base in for reading which is so often required. In other words the prismatic power introduced by such reading segments is controlled by their shape and size.

The object of this invention is to enable the amount and direction of prismatic power to be accurately controlled, independently of the shape of the reading segment so that any desired shape of segment may be employed with any desired amount of prismatic power within reasonable limits and with the base of the prism in any desired direction.

According to the present invention, the method consists in fusing on to a major lens in one side of which has previously been ground a depression, a correspondingly ground segment piece formed of the same glass as the major lens with an eccentrically positioned insert of a higher refractive index and of the shape and size required for the reading segment. It will thus be seen that by varying the angular relation of the vertical axis of the segment piece and its insert with respect to the vertical meridian of the major lens, the direction of the base of the prism can be controlled as desired.

The desired amount of prism in the reading segment can, by this method of manufacture, be controlled in either one of the following operations:

(1) By grinding the depression curve in the major lens at a suitable angle to the surface thereof, and after fusing the segment piece in correct position, surfacing the whole

so as to keep the prismatic power of the segment as desired.

(2) By grinding the segment piece after fusion, until the segment circle is the correct size to give the desired amount of prism.

The size of the circle of the segment piece which is otherwise invisible after fusing as the outer portion of the segment piece is of the same glass as the major lens into which it is fused, is calculated by expressing the prism dioptries required in terms of decenteration and adding such decenteration to the distance from the nearest part of segment circle to the centre of the reading segment, which gives the radius of the segment circle.

Preferably in this second operation one or both of the contact surfaces of the major lens and segment piece, in before fusion, marked by lines or curves which may be tangential to or just outside the segment circle required, when, after fusion, the segment side of the lens blank is ground until the marks disappear to leave the correct size of segment circle.

The major lens which is of crown glass and usually called the counterblank, since it has a depression ground in it on one side, into which the segment piece is fused, is ground with a larger depression than would be a fused bifocal; in some cases it may have to be ground almost over the entire surface of the lens blank.

The segment piece is prepared by either moulding or pressing a hole or slot in a plate of crown glass of exactly the same optical and physical qualities as the major lens or counterblank, the inside of which hole or slot is then suitably prepared for the reception of the insert formed from a piece of higher refractive glass also suitably finished to neatly fit the hole. The two parts of the segment piece are then placed in a furnace and raised to a temperature high enough to melt one of the glasses so that they fuse together at their edges and form a solid segment piece which after being well annealed is surfaced to correspond with the depression curve ground on the major lens, in the usual way, although greater accuracy is required than is normally

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the case with a fused bifocal lens other than the type referred to above.

It is to be understood that the slot may be formed by cutting the glass plate inwardly from one edge or the slot may be entirely within the plate. Alternatively a depression may be cut or otherwise formed in one side of the glass plate into which depression a piece of glass of higher refractive index is fused. It will thus be seen that the piece or insert of high index glass which is to become the reading segment is secured in or snugly surrounded by glass of exactly the same optical properties as the major lens, the shape of the hole, slot or depression mainly determining the final shape of the reading portion and which may be round, oblong, oval or of any other desired shape.

The invention is illustrated by the accompanying drawing in which Figures 1-4 and 1'-4' are respectively front and sectional views illustrating the various steps in the manufacture of a lens constructed in accordance with the method of this invention.

Figures 5-7 and 5'-7' are respectively front and sectional views of three lenses of lens constructed in accordance with this invention.

In Figures 5A-7A the section lines have for the sake of clearness been omitted.

Referring to Figures 1 and 1', 1 indicates the major lens or component wherein is ground a depression. 2 (Figure 2, 2') is a segment piece of the same glass wherein is cut a hole 3 for the reception of an insert or lens 4 (Figures 3 and 3'). The segment piece including its insert, after fusion together and having been suitably ground, is then placed upon the depression in the lens 1, and the whole fused together.

In the foregoing figures and Figures 5 and 5' it will be noticed that the segment piece 2 is positioned with its vertical axis  $a-a'$  coincident with the vertical meridian  $b-b'$  of the major lens 1, the insert 4 being at the top of the segment piece.

After grinding and finishing the lens it is evident that the thickest portion of the insert will remain at the underside giving therefore prism base down. Referring now to Figures 6 and 6' the vertical axis of the segment piece has been turned through an angle of  $180^\circ$  with respect to the major lens with the result that prism base up is obtained. Figures 7 and 7' show a lens with prism base in for reading, the vertical meridian having been turned through an angle of  $90^\circ$ .

Referring again to Figure 4 there are shown three half circles which when using operation No. 2, are marked upon the inner surface of the glass — the segment piece and/or the major lens to denote the size of the segment circle 5 and in order to afford a guide to the person grinding the lens for the purpose of enabling him to gauge the amount of glass

to be removed until the required size of segment circle remains.

From the above it will be seen that by varying the size of the segment circle any reasonable amount of prismatic power may be obtained and by varying the position of the circle that any direction of the prism will be obtained. Furthermore it will be readily seen that the shape of the insert and thus the reading segment need not be round as shown but may be of any desired shape and size according to the habits or vocation of the wearer.

What we claim is:  
1. A method for the manufacture of a fused bifocal lens which comprises fusing on to a major lens a segment of substantially the same refractive index having an insert of a different refractive index, controlling the prism direction by suitably setting the angular relation between the axis of the main lens and the segment, providing guide marks at the boundary surface between the major lens and the segment and grinding till the guide marks disappear.

2. A method for the manufacture of a fused bifocal lens which comprises fusing on to the major lens a segment of substantially the same refractive index having an insert of a higher refractive index, controlling the prism direction by suitably setting the angular relation between the axis of the main lens and the segment, controlling the amount of prism by suitably setting the surface of the depression in the major lens in which the segment is to be fused, providing guide marks at the boundary surface between the major lens and the segment and grinding till the guide marks disappear.

In testimony that we claim the foregoing as our invention we have signed our names this sixth day of May 1930.

EDWARD CULVER,  
ALFRED HENRY EMERSON.

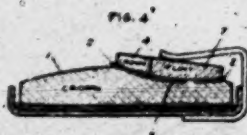
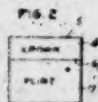
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Feb 28, 1933

N. M. STANLEY

1,899,777

Pat. 2,891  
Filed March 5, 1929



INVENTOR  
NORMAN M. STANLEY  
BY *John H. Stanley*  
ATTORNEY

927

Patented Feb. 28, 1933

1,899,777

## UNITED STATES PATENT OFFICE

NATHAN M. STANLEY, OF DAYTON, OHIO, ASSIGNOR BY MENSURE ASSIGNMENTS OF ONE HALF TO THE UNIVIS CORPORATION, OF WILMINGTON, DELAWARE, A CORPORATION OF DELAWARE, AND ONE HALF TO UNITED KINGDOM OPTICAL COMPANY, LIMITED, OF LONDON, ENGLAND

## LENS

Application filed March 2, 1929. Serial No. 264,309

My invention relates to bifocal lenses. It is the object of my invention to provide a bifocal lens blank with an appreciable space above and on either side thereof and below the insert.

It is a further object to provide a bifocal lens comprising a counter sink or major blank and a circular insert, the minor portion of said insert being of the same glass as that of the counter sink and disappearing therein as an integral part thereof, as distinguished from the major portion of the insert which is of different glass.

In particular, it is my object to provide an insert of one glass integrally formed with a counter sink of another glass of a shape different from that of the depression cut in the counter sink.

It is an object to provide such an insert which, upon completion, is as joined to the counter sink that no distinguishable reflection from the edges of the joint can be found.

In particular, it is my object to provide an insert integrally formed in the counter sink, which has lateral and vertical dimensions that are substantially unequal.

It is an additional object to provide such an insert in which the top, bottom and lateral edges of the insert are spaced from the major axis of the counter sink, while the sides and bottoms thereof constitute a portion of a circle and in which the insert is located in the blank in spaced relationship from the margins of the counter sink to permit of vision through such space in the resulting lens. When I refer to counter sink, I am referring to the entire major blank having the depression for the reception of the insert.

Referring to the drawing:  
Figure 1 is a plan view of the counter sink with a portion thereof removed for the reception of the insert.

Figure 2 is a plan view of the insert before forming the edges.

Figure 3 is a plan view of the formed insert.

Figure 4 is a side elevation of the insert in position for facing.

Figure 5 is a plan view of the completed bifocal lens blank.

Figure 6 is a section through the completed blank.

Referring to the drawing in detail, 1 is a lens blank from the surface of which spaced from the margins thereof there have been cut away a portion the margin of which is circular and the bottom of which is semi-circular. This margin is marked 2 and the base is marked 3. The counter sink is preferably made of crown glass.

Forming to the preparation of the insert, a narrow, oblong block of crown glass, designated 4 having one end beveled as shown in 5 and 6 is placed on the relatively large block of first glass. This may preferably be a glass of flint glass or gray glass. It will be noted that the vertical thickness of the insert is very much less than the vertical dimension of the counter sink so that the depth of the first glass has run to three times as great as that of the insert block.

This narrow bar, faced with the crown and flint glass, is then clamped to a work. The crown segment of the first segment on the straight line of juncture designated 5. The crown segment constitutes a relatively small portion of the circular insert.

The insert is placed upon the counter sink in the depression 3 in which it is faced in any suitable manner being located in position by feelers.

Upon the counter sink being faced with the insert the crown portion of the insert merges with and becomes an integral part of the crown glass of the counter sink while the flint portion of the insert becomes integrally fused to the bottom 3 and sides 2 of the counter sink.

It will be noted that the margin straight edge 6 of the insert of flint glass is parallel to the major transverse axis of the counter sink.

It will be further noted that the insert's lateral dimension is substantially equal to the sum of the distance in either side of the insert in the counter sink.

It will be further noted that there is sufficient space below the insert for distance vision through the crown glass.

It will be noted that the vertical and lat-

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eral dimensions of the first insert are substantially the same and that the vertical axis of the insert coincide with the vertical axis of the counter sink.

2. The counter sink as finished is of different shape than the cut away portion 3 and its margin 2 in the counter sink. Thus, it is possible to accurately and effectively cut away in the well known manner a circular depression with the circular margin in the counter sink but secure an insert fused thereto of different shape as it would be virtually impossible to satisfactorily and accurately cut away the counter sink initially to insert an insert of the form that has resulted from my invention.

The resulting lens of my invention has the very substantial advantage of wide lateral, long distance vision on either side thereof, easy long distance vision above the flat top of the insert, a very deep reading area with sufficient space below this reading area for long distance vision as in walking upstairs, shifting the gear shift of an automobile, or other such uses where the ordinary bifocal lens, which has no long distance vision area beneath the insert or to one side thereof will prevent the user of the lens from having long distance vision under such circumstances.

It will be understood that I desire to comprehend within my invention such modifications as may be necessary to adapt it to varying conditions and uses.

Having thus fully described my invention, what I claim as new and desire to secure by Letters Patent, is:

1. In a lens, a major lens and an insert of different glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top, the vertical dimension thereof being greater than the radius of the circle but less than the diameter of the circle.

2. In a lens, a major lens and an insert of different glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top, the vertical dimension thereof being greater than the radius of the circle but less than the diameter of the circle, said insert being spaced from the bottom and side walls of the major lens to permit vision on either side and below as well as above the insert.

3. In a lens, a major lens of one kind of glass, a circular insert having its top cut off above the major diameter thereof and parallel therewith, the vertical dimension of the insert being less than the diameter but greater than the radius of the insert.

4. In a lens, a major lens of one kind of glass, an insert of another kind of glass, said insert comprising a circular member from which the top thereof has been removed above the diameter of the insert along a flat plane so that the vertical diameter of the insert is

less than the horizontal diameter but greater than the radius of the insert, said insert being located with its flat top parallel but spaced from the horizontal center line of the major lens.

5. In a lens, a major lens of one kind of glass, an insert of another kind of glass, said insert comprising a circular member from which the top thereof has been removed above the diameter of the insert along a flat plane so that the vertical diameter of the insert is less than the horizontal diameter but greater than the radius of the insert, said insert being located with its flat top parallel but spaced from the horizontal center line of the major lens and so spaced from the margin of the major lens that the user of the lens can see through the major lens above, on both sides of and below the insert.

6. In a lens, a major lens having a circular cut away portion forming a semi-circular depression spaced from the bottom, side walls and top of the major lens, a circular insert mounted therein and divided on a chord above the diameter of the insert the portion of the insert below the chord having a vertical dimension less than the diameter of the insert but greater than the radius thereof.

7. In a lens, a major lens having a circular cut away portion forming a semi-circular depression spaced from the bottom, side walls and top of the major lens, a circular insert mounted therein and divided on a chord above the diameter of the insert the portion of the insert below the chord having a vertical dimension less than the diameter of the insert but greater than the radius thereof, the portion of the insert above the chord being of the same glass as the major lens and the portion below the chord being of a different glass.

8. In a lens, a one piece major lens having one surface cut away in a depression with a circular margin and semi-circular bottom, but not clear through the major lens, and an insert thereof of circular form and a semi-circular bottom fitting in said depression, said insert being divided on a chord above its center the area below the chord having a vertical dimension less than the diameter of the insert but greater than the radius thereof.

9. In a lens, a one piece major lens having one surface cut away in a depression with a circular margin and semi-circular bottom, but not clear through the major lens, and an insert thereof of circular form and a semi-circular bottom fitting in said depression, said insert being divided on a chord above its center the area below the chord having a vertical dimension less than the diameter of the insert but greater than the radius thereof, said chord being arranged parallel to the transverse center line of the major lens.

10. In a lens, a one-piece major lens having one surface cut away in a depression with a circular margin and semi-circular bottom,

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but not clear through the major lens, and an insert thereof of circular form and a semi-circular bottom fitting in said depression, said insert being divided on a chord above its center the area below the chord having a vertical dimension less than the diameter of the insert but greater than the radius thereof, said chord being arranged parallel to the transverse center line of the major lens, but offset therefrom and spaced from the edge of the major lens so, provide vision above, through both sides and below the insert through the major lens.

11. In a lens, a major lens, an insert thereon spaced from the walls of the major lens, said insert having a flat top and a round bottom, the vertical dimension of the insert being less than the diameter of the segment but greater than its radius.

12. A multifocal lens having a major portion with a convex surface having a lens surface therein and a segmental portion of different index of refraction secured to said convex surface of the convex surface for near vision through the segment and underlying major portion and segmental portion having a lower portion circular in outline and a top portion the bounding edge of which is substantially normal to the vertical diameter of the convex surface and which lies between the center of the convex surface circle and the top edge of said circle.

13. In a bifocal lens, a major lens having a single cavity and an insert of different glass from the major lens secured therein, said insert consisting of a circular member less than a full circle, the vertical dimension thereof being greater than the radius of the circle but less than the diameter of the circle, and having a top of different outline from the outline of the remainder of the insert.

14. A bifocal lens having a major portion with a convex surface having a lens surface therein, and an insert of different index of refraction secured to said convex surface of the convex surface for near vision through the insert and underlying major portion, said insert consisting of a circular member less than a full circle, the vertical dimension thereof being greater than the radius of the circle but less than the diameter of the circle, and having a top of different outline from the outline of the remainder of the insert.

15. A bifocal lens having a major portion with a convex surface having a lens surface therein, and an insert of different index of refraction secured to said convex surface of the convex surface for near vision through the insert and underlying major portion, said insert consisting of a circular member less than a full circle with

a flat top, the vertical dimension thereof being greater than the radius of the circle but less than the diameter of the circle.

In testimony whereof, I affix my signature  
NATHAN M. STANLEY.

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Oct. 24, 1933.

E. CULVER ET AL.

1,932,199

LENS

Filed May 1, 1930

Fig. 1.

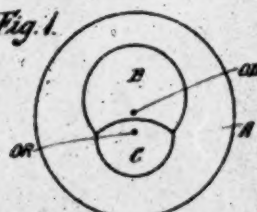


Fig. 2.



Fig. 3.



Fig. 4.



Fig. 5.



Fig. 6.



Fig. 7.



EDWARD CULVER,

ALFRED HENRY INGRAM,

Attorneys.

Patented Oct. 24, 1933

1,332,109

UNITED STATES PATENT OFFICE

1,332,109

LENS

Edward Chubb, London, and Alfred Henry  
Barnard, Ph.D., London, England, assignors  
to United Chubb Optical Company, Limited,  
London, England

Application May 1, 1928, Serial No. 594,278

and in Great Britain January 21, 1928

11 Claims. (Cl. 88-24)

This invention relates to improvements in  
lenses and more particularly fused optical lenses.  
It is well known that when the spectrum for  
optical use is used, as in the case of the  
lens of a camera, or in the case of a lens  
used in a microscope, a very strong positive lens is required in front of the  
eye to make up for the refractive loss which  
has been removed, and that in focusing the  
lens from the eye the ability to accommodate  
is found to be different distances of object the ob-  
ject is seen clearly, so that the single lens which  
might provide for vision at a distance will not  
enable clear objects to be seen clearly. It is  
well known that the field of view with strong  
and heavy positive lenses, one of the best forms  
is a very limited, clear vision being possible  
at or near the optical centre of the lens, a  
very small area would therefore be seen as ob-  
ject at the focal distance, although it would  
not be sharp.

The main object of this invention is to pro-  
vide a lens having optical properties fused to  
have less divergence to give a relatively large field  
of view as well as increasing powers for distance  
and near vision.

According to the present invention the lens  
negative a refractive support in which are  
disposed preferably in layers, one or more ad-  
vanced means for vision and having varying focal  
lengths and whose optical centres are located not  
nearly at the optical centre of the whole lens  
of the support.

In this invention therefore the refractive parts  
of the lens are formed in a series of support  
of a nature which is such as to provide for  
vision at different distances and the lens  
not being at a distance from the eye the  
optical centre of the lens is not at the optical  
centre of the support.

According to the present invention the lens  
is formed in a series of support of a nature  
which is such as to provide for vision at  
different distances and the lens not being at  
a distance from the eye the optical centre of  
the lens is not at the optical centre of the  
support. The lens is formed in a series of  
support of a nature which is such as to pro-  
vide for vision at different distances and the  
lens not being at a distance from the eye the  
optical centre of the lens is not at the optical  
centre of the support.

The lens is formed in a series of support  
of a nature which is such as to provide for  
vision at different distances and the lens not  
being at a distance from the eye the optical  
centre of the lens is not at the optical centre  
of the support.

so that each more advanced and perfect state  
is possible in a lens light is made and outside  
the ordinary centre of distance and work.

The invention is illustrated in the accompany-  
ing drawing in which Figure 1 is an elevation  
of a complete lens constructed in accordance with  
the invention.

Fig. 2 and 3 are corresponding vertical sec-  
tions showing respectively a plane surface and  
a curved surface.

Figures 4 and 5 are side views of the lens  
having horizontal and vertical axes of the lens  
support.

Figures 6 and 7 are similar views of the lens  
as respects the eye.

Referring to the drawing A is the lens  
support or carrier which in the present inven-  
tion carries a series of refractive parts B and  
C.

The upper portion B is used for distance  
vision and the lower portion C for near vision.

The two segments of parts B and C are of high  
and necessary of the same refractive index and  
have the same carrier A, which is also transparent  
but not however required for vision at its outer  
periphery.

Fig. 1 and 2 indicate suitable positions for the  
optical centres of distance and reading parts that  
can be obtained.

Reference to Figures 1 and 2 will show the  
lens segments or refractive parts indicated by  
arrows 1 and 2 which would have parts to be  
added to that of the lens support A  
the power of which may be a little more than  
half of the total power. The difference in the  
power of distance and reading is obtained by  
making the refractive parts B and C of different  
thicknesses as shown in Fig. 1.

Figures 3 and 4 show respectively the shape  
of the refractive parts B and C after fusion  
and working.

The refractive parts that may be shaped to  
be transparent may be shaped to a larger  
area, being a smaller one with the present  
invention of the refractive parts being inside the  
lens itself.

The lens of reading vision part may also be  
shaped to be transparent and be shaped to a  
larger area, being a smaller one with the present  
invention of the refractive parts being inside the  
lens itself.

The lens of reading vision part may also be  
shaped to be transparent and be shaped to a  
larger area, being a smaller one with the present  
invention of the refractive parts being inside the  
lens itself.

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that such lenses are relatively light in weight compared with their power.

It should be understood that although as illustrated, the complete lens is of circular form it may be of any other suitable shape.

With our claim 1:-

1. A bifocal lens comprising a lenticular support in which are mounted, such as by fusion, two segments of different power, said segments having a greater refractive index than that of the support with which they combine to form, respectively the distance and close fields of vision of the lens, the insert for distance vision being large enough to cover the useful field of vision and overlapping the other insert for near vision which is smaller than and located below the other insert.

2. A fused bifocal lens as claimed in claim 1, in which the distance vision field is shaped as an incomplete circle as defined by a larger circle cutting a smaller circle, the geometrical center of the smaller circle being outside the larger circle, said centers of the near and distance vision inserts being located outside the center of the support.

3. A fused bifocal lens as claimed in claim 1, in which the near vision field is shaped as an incomplete circle as defined by a larger circle cutting a smaller one, the center of the smaller circle being inside the larger circle, said centers of the near and distance vision inserts being located inside the center of the support.

4. A fused bifocal lens, a lenticular support of one piece having two intersecting curved depressions of a convex wall and an insert in each depression fused to each other and to the support with which they combine to form the main field of vision of the lens the insert in the distance vision field being shaped as an incomplete circle and the insert in the close vision field being shaped as a smaller circle, both inserts being mounted from the periphery of the support and consisting of outer segments of circles having their centers located within the respective segments.

5. A fused bifocal lens comprising a lenticular support in which are fused two adjacent inserts having a higher refractive index than the support, each insert carrying in focal length to serve in combination with the support for distance and close fields of vision of the lens, the inserts being defined by two outer segments of circles so that the close vision insert projects into the distance vision insert, the optical centers of the inserts being located in a plane passing through the optical centers of the support.

6. A fused bifocal lens comprising a lenticular support in which are fused two adjacent inserts having a higher refractive index than the support, each insert carrying in focal length to serve in combination with the support for distance and close fields of vision of the lens, the inserts being defined by two outer segments of circles so that the close vision insert projects into the distance vision insert, the optical centers of the inserts being located in a plane passing through the optical centers of the support.

7. A fused bifocal lens comprising a lenticular support in which are fused two adjacent inserts having a higher refractive index than the support, each insert carrying in focal length to serve in combination with the support for distance and close fields of vision of the lens, the inserts being defined by two outer segments of circles so that the close vision insert projects into the distance vision insert, the optical centers of the inserts being located in a plane passing through the optical centers of the support.

8. A fused bifocal lens comprising a lenticular support in which are fused two adjacent inserts having a higher refractive index than the support, each insert carrying in focal length to serve in combination with the support for distance and close fields of vision of the lens, the inserts being defined by two outer segments of circles so that the close vision insert projects into the distance vision insert, the optical centers of the inserts being located in a plane passing through the optical centers of the support.

9. A fused bifocal lens comprising a lenticular support in which are fused two adjacent inserts having a higher refractive index than the support, each insert carrying in focal length to serve in combination with the support for distance and close fields of vision of the lens, the inserts being defined by two outer segments of circles having their centers located within the respective segments and the optical centers of the inserts passing through the vertical meridian of the support.

10. A fused bifocal lens comprising a lenticular support in which are fused two adjacent inserts having a higher refractive index than the support, each insert carrying in focal length to serve in combination with the support for distance and close fields of vision of the lens, the inserts being defined by two segments of circles with the upper circle larger than the lower circle and the centers of the circles located within their respective segments.

11. A fused bifocal lens comprising a lenticular support having two fused inserts with convex depression curves, a comparatively large insert for distance vision, and a comparatively small insert for near vision and located below the large insert with which it overlaps.

12. A bifocal lens comprising a marginal non-circular lenticular support and central circular vision portions of different refractive index, the vision inserted in one face thereof, said vision portions having an upper distance vision insert and a lower near vision insert of unequal size.

13. A bifocal lens comprising a marginal non-circular lenticular support and central circular vision portions of different refractive index, the vision inserted in one face thereof, said vision portions having an upper distance vision insert and a lower near vision insert of unequal size, and a deliberately curved line of inflection therebetween.

14. A bifocal lens comprising a marginal non-circular lenticular support and central circular vision portions of different refractive index, the vision inserted in one face thereof, said vision portions having an upper distance vision insert and a lower near vision insert of unequal size, and distance vision insert being larger than said near vision insert and separated from it by a deliberately curved line of inflection.

EDWARD CULVER,  
ALFRED HENRY SHANNON.

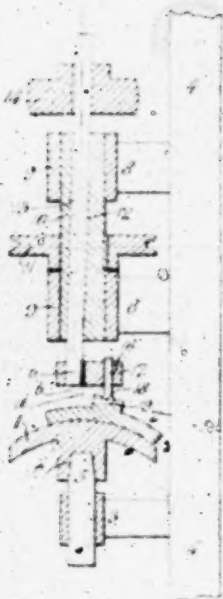


532 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Oct. 1, 1935

E. CULVER

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EDWARD CULVER

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Patented Oct. 1, 1935

2,016,134

## UNITED STATES PATENT OFFICE

2,016,134  
POLISHING MACHINEEdward Culver, Crouch End, London, England,  
assignor to United Kingdom Optical Company,  
Limited, Mill Hill, London, England

Application February 13, 1934, Serial No. 711,397

5 Claims. (Cl. 51-129)

This invention relates to a polishing machine suitable for optical work such as polishing spectacles and other lenses.

The main object of the invention is to provide a machine for polishing spectacle lenses, the work head of which automatically traces a line in a substantially circular path, with a continuously changing centre.

Another object of the invention is to provide a machine which can easily be adapted in order to control the throw of the work head.

Still another object of the invention is to provide a polishing machine of a simple and robust character and having a minimum number of parts.

The invention is illustrated in the accompanying drawing which is a sectional elevation of a lens polishing machine.

The machine comprises a work table 1 on which a lens to be polished is mounted, and polishing head 2. The work table 1 is detachably carried on a bracket 3 forming part of a vertical post 4 rigid with the base of the machine (not shown). The bracket 3 has a spool 5 on the head of which engages a tapered socket 6 on the underside of the work table, this permits of varying sizes and types of work tables being fitted.

Also integral with the post 4 are brackets 7 having bearings 8 for a sleeve member 10 which is one of the driving members and has keyed to it a driving pulley 11. The sleeve is provided with an angular or inclined bore 12 which forms a bearing for a spindle 13 constituting the other driving member. It is to be noted that the centre line of the bore 12 denoted at a-b is inclined to the axis of rotation of the sleeve denoted by c-d.

Keyed to the upper end of the spindle is a driving pulley 14 the face of which is curved to accommodate the angularity of its axis of rotation.

Fixed on the lower end of the spindle is a crank block 15 which carries an eccentric finger piece 17 for imparting movement to the polishing head 2. The finger 17 is provided with a spherical end 18 for engagement with a spherical concavity 19 on the work head.

In operation it will be obvious that the movement of the work head is dependent upon the respective eccentricities of the finger piece as regards its rotational movement about the axis a-b and the lower end of the spindle as regards its eccentric mounting in the sleeve member that is the eccentricity of the point o with respect to the axis c-d.

The combination of these movements results in the work head tracing a line over a given area

which never retraces itself. The amount of eccentricity of the spindle can within limits be controlled by varying the length of the spindle projecting from the end of its bearing in the sleeve member.

It will be appreciated that it is essential for the spindle 13 carrying the pulley 14 at the top end to pass through the revolving bearing 10 of the spindle at an angle to the axis c-d of same, whereby the end of the spindle carrying the crank 15 is eccentric to the revolving bearing, yet at the same time the pulley at the top of the spindle remains the same distance from its driving shaft. Whereas if the axis a-b of the spindle were parallel to the axis c-d of the revolving bearing and was out of centre or eccentric to it, the pulley 14 would constantly be changing its distance from the driving shaft by the amount of eccentricity of the spindle resulting in the belt becoming alternately tight and slack.

In order that the angular movement of the pulley 14 shall be a minimum it is preferable that in the normal position of the spindle, its centre line a-b intersects the axis c-d at a point which is the vertical centre of the pulley.

In practice it will be found convenient to drive the spindle at a greater speed than the bearing member 10. A suitable ratio is about 4:1.

What I claim is:-

1. In a polishing machine suitable for optical work the combination of a bearing member mounted for rotational movement, a spindle rotatably carried by the bearing member, the axis of the spindle and bearing member being inclined to each other, a polishing head eccentrically mounted on the spindle, and means for driving the bearing member and the spindle.

2. In a polishing machine suitable for optical work the combination of a bearing member mounted for rotational movement, a spindle rotatably carried by the bearing member, the axis of the spindle and the bearing member being at an angle to each other, a crank block on the eccentric end of the spindle and a driving member on the other, a polishing head on the crank block and means for imparting rotational movement to the bearing member and to the spindle through its driving member.

3. In a polishing machine suitable for optical work the combination of a base, a sleeve forming a revolvable bearing rotatable in bearings on the base, said sleeve having a longitudinal bore, whose axis is at an angle to the rotational axis of the sleeve, a spindle rotatable in the bore, a crank block on the eccentric end of the spindle and

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a driving member on the other, a polishing head on the crank block and means for imparting rotational movement to the driving member and to the spindle through its driving member.

3 4. In a polishing machine in combination with a work-supporting table, a spindle having on one end a crank, a head adapted to be moved over the table and operatively connected to the crank, means to rotate the spindle and cause the head to revolve about on the table, and means to cause the spindle to move in a conical path while it is rotating.

5. In a polishing machine in combination with a work-supporting table, a rotatably mounted sleeve having a bore of an acute angle to its axis of rotation, a spindle rotatably mounted in the bore, a grinding head on the spindle adapted to pass about over the table, means to rotate the sleeve, the axis of rotation of the sleeve intersecting the axis of rotation of the spindle, and driving means on the spindle where the axis of rotation of the sleeve crosses the axis of rotation of the spindle.

EDWARD CULVER.

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Dec. 31, 1935.

E. POLACKOFF  
TELESCOPIC OPTICAL LENS  
Filed Oct. 10, 1933

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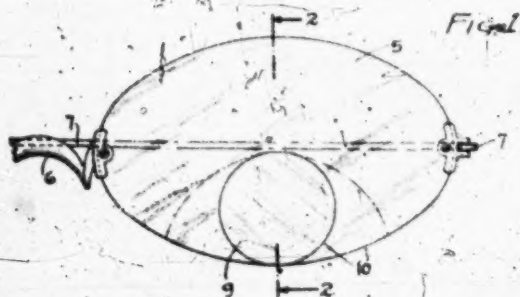


FIG 2

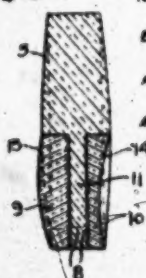


FIG 3



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EDWARD POLACKOFF  
BY *Ed. Polackoff*  
ATTORNEY

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Patented Dec. 31, 1935

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## UNITED STATES PATENT OFFICE

2,025,892

## TELESCOPIC BIFOCAL LENS

Edward Polakoff, Bronx, N. Y., assignor, by direct and mesne assignments, to The Univis Lens Company, Dayton, Ohio, a corporation of Ohio

Application October 16, 1933, Serial No. 687,941

10 Claims. (Cl. 38-54)

This invention relates to bifocal lenses as employed in eye-glass constructions.

A particular object of my invention is to provide in connection with the regular eye-glass lens, other smaller lenses which are seated in the opposite faces of the main lens and in alignment so that the retinal image is increased in size when the glasses are employed by people whose eyes have subnormal near vision after correction of the eyes with regular lenses.

This arrangement provides for lenses which can be used for all purposes without adjustment by the wearer.

A still further object of my invention is to provide a telescopic bifocal lens composed of the first segments either ground or cemented on opposite sides of a crown lens, the distance correction being ground into the crown lens and the reading vision derived through the use of the two first lenses embedded or cemented to the crown lens. The first segment on the anterior surface of the crown lens is of convex power, and the first segment on the posterior side of the crown lens is of concave power.

With the foregoing and other objects in view, which will appear as the description proceeds, the invention resides in the combination and arrangement of parts and in the details of construction hereinafter described and claimed, it being understood that changes in the precise embodiment of the invention herein disclosed may be made within the scope of what is claimed without departing from the spirit of the invention.

In the accompanying drawing

Figure 1 is a view in front elevation of a single eye-glass lens in which is incorporated the telescopic bifocal lens arrangement that forms my invention.

Figure 2 is a section taken on the line 2-2 of Figure 1, illustrating the method employed in seating the two minor lenses in the main lens to provide the telescopic effect desired.

Figure 3 is a schematic view of the telescopic bifocal lens according to the invention.

Referring to the drawing in detail, 1 indicates one of the main or major lenses of an eye-glass construction which lenses, as is well known, are secured together by a suitable bridge portion, 2, and may be provided with the temple 3, for holding the eye-glasses in position on the face of the wearer.

It is the purpose of my invention to use a telescopic bifocal lens in connection with the regular lens used by people whose eyes have subnormal vision, which may be corrected with the

regular lenses, and the object of my invention is to increase the size of the retinal image for use by people whose eyes have subnormal near vision after being corrected with regular lenses. This arrangement provides for lenses which can be used for all purposes without adjustment by the wearer. And in carrying out my invention, the main, or crown lens 1, is ground to provide the seats, 4, in the opposite side of the lower portion thereof. These seats, 4, are arranged to receive the minor lenses or first segments, 5 and 6, respectively, the lens, 5, being of convex power, and being positioned on the anterior surface of the main lens, it being evident, as illustrated, that the anterior surface of the lens, 5, is of convex power. The inner lens, 6, or the one on the posterior surface or side of the main lens, is of concave power, and as illustrated in Figure 2 the posterior side is of concave power, so that in the whole lens combination there is provided the main lens, 1, and the two minor lenses, 5 and 6, which are separated from each other by the thickness of the reduced portion of the main lens, 1.

It is understood that the lenses, 5 and 6, could be placed back to back and ground into the main lens 1, without leaving any of the lens, 1, between said lenses 5 and 6, although the illustrated construction is the preferred one.

It is to be understood also that the first segments or minor lenses, 5 and 6, are either ground or cemented on the opposite sides of the crown lens, 1, the distance correction being ground into the crown lens, and the reading vision is derived through the use of the two first or minor lenses, 5 and 6, embedded or cemented in the crown lens.

Referring to Fig. 2, minor lenses 5 and 6 are so spaced apart that their focal planes coincide. The distance designated  $P_1$  is the focal length of the convex lens 5. The focal length of the concave lens 6 is the distance represented by  $P_2$ . The object to be magnified is designated  $BA$  and is generally located at a distant point or stated in another way, a distance from the convex lens many times the focal length thereof. The angle of the rays that the object subtends is designated  $C$ . These rays are transmitted to the convex lens and would form an image  $A''B''$  if the concave lens 6 were not a part of the system. The rays transmitted through positive lens 5 however reach the concave lens and are slightly deflected thereby after which they travel into the eye E. Consequently the line of sight of the eye

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age that the eye sees is along the deflected rays emanating from the concaved lens. Hence object BA would be seen as a vertical and enlarged image B' A'. It follows therefore that the angle D that image subtends is greater than the angle C subtended by its object and hence the image of the object is magnified and the extent of the magnification is dependent upon a ratio of the focal lengths of the minor lenses or expressed mathematically is

$$\frac{F_2}{F_1} = \frac{\text{Angle D}}{\text{Angle C}} > 1$$

It is evident, therefore, that I have provided the means of increasing the size of the retinal image which may be used by people whose eyes have subnormal near vision after being corrected with regular lenses, and a pair of glasses which provides for lenses which can be used for all purposes, without adjustment by the wearer. I am aware that telescopic spectacles of one kind or another have been employed, but these are clumsy because said require adjustment, and at the same time do not give the vision correction that is necessary in using the telescopic lenses to all eyes. I have provided the telescopic effect without losing advantage of the correction effect of the regular lenses, and the telescopic effect is more pronounced because the eye has been accommodated by the use of the main lens, B, which has been ground to suit the individual wearer.

While I have illustrated and described my invention with some degree of particularity I realize that in practice various alterations there may be made without departing from the spirit of the invention or the scope of the appended claims.

What I claim is:

1. A telescopic bifocal lens comprising a major lens ground for vision adjustment and minor lenses of collecting and diverging powers seated in opposite faces of said major lens in axial alignment with each other, and each having an index of refraction higher than said major lens and having their focal planes coinciding in back of the posterior face of said major lens, the relative space between and powers of said minor lenses being such that a telescopic vision effect is produced.

2. A telescopic bifocal lens comprising a major lens of a given index of refraction ground for vision adjustment and two minor lenses each of a higher index of refraction than the index of refraction of said major lens seated in opposite faces of said major lens in axial alignment with each other, the minor lens on the anterior surface of the major lens being of positive power and the minor lens on the posterior side of the major lens being of negative power, the relative space between and the powers of said minor lenses being such that a telescopic vision effect is produced.

3. The combination with a main eyeglass lens which has been ground for vision correction, of a plurality of lenses comprising a positive and negative lens each having an index of refraction higher than said main lens and having their focal planes substantially coinciding in back of the posterior face of said main lens seated in opposite faces of said main lens and in axial alignment with each other to provide a telescopic reading effect.

4. The combination with a crown main eye-

glass lens which has been ground for vision correction, of a plurality of first segments constituting opposing lenses comprising a positive and negative lens of a higher index of refraction than said main lens and having their focal planes substantially coinciding in back of the posterior face of said main lens and secured to opposite faces of said main lens and in axial alignment with each other to provide a telescopic reading effect.

5. A telescopic bifocal lens comprising a major lens ground for vision adjustment and minor lenses seated in opposite faces of said major lens and in axial alignment, the minor lens on the anterior surface of the major lens being of positive power, and the minor lens on the posterior surface being of negative power, the index of refraction of said minor lenses being higher than the index of refraction of said major lens and having their focal planes substantially coinciding in back of the posterior face of said major lens, the powers of said minor lenses being such that a telescopic effect is produced.

6. In a telescopic bifocal lens, the combination of a major crown glass lens ground for vision adjustment, positive and negative minor lens means each of first glass disposed in opposite faces of said major lens and in axial alignment, said opposing minor lens means being spatially arranged with their focal planes coinciding and cooperating to produce an image subtending an angle greater than the angle subtended by its object.

7. In a telescopic bifocal lens, the combination of a major lens ground for vision adjustment, a minor lens of positive power disposed in an anterior portion of said major lens, a minor lens of negative power disposed in a posterior portion of said major lens, said minor lenses being disposed in axial alignment and having their focal lengths coinciding, said minor lenses each having an index of refraction higher than said major lens and cooperating to produce an image subtending an angle greater than the angle subtended by its object.

8. In a telescopic bifocal lens, the combination of a major lens ground for vision adjustment, a positive power minor lens disposed in an anterior portion of said major lens, a negative power minor lens disposed in a posterior portion of said major lens, said minor lenses being spatially arranged in axial alignment and having their focal lengths coinciding in back of said posterior portion, said minor lenses each having an index of refraction higher than said major lens, said minor lenses cooperating to produce an image subtending in front of said anterior portion an angle greater than the angle subtended by its object.

9. In a telescopic bifocal lens, the combination of a major lens of crown glass ground for vision adjustment, a minor lens of flint glass and of positive power secured to an anterior portion of said major lens, a minor lens of flint glass and of negative power secured to a posterior portion of said major lens, said minor lenses having their optical centers disposed in horizontal alignment and having their focal planes coinciding in back of said posterior portion, said minor lenses cooperating to produce an image subtending an angle greater than the angle subtended by its object.

10. A telescopic bifocal lens comprising a major lens of crown glass, ground for vision adjustment and two minor lenses each of flint glass,

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seated in opposite faces of said major lens and having their optical centres disposed in horizontal axial alignment, the minor lens on the anterior surface of said major lens being of positive power and the minor lens on the posterior side of said major lens being of negative power, said

minor lenses having their focal planes substantially coincident at the back of the posterior face of said major lens, the relative powers of said minor lenses being such that a telescopic vision effect is produced.

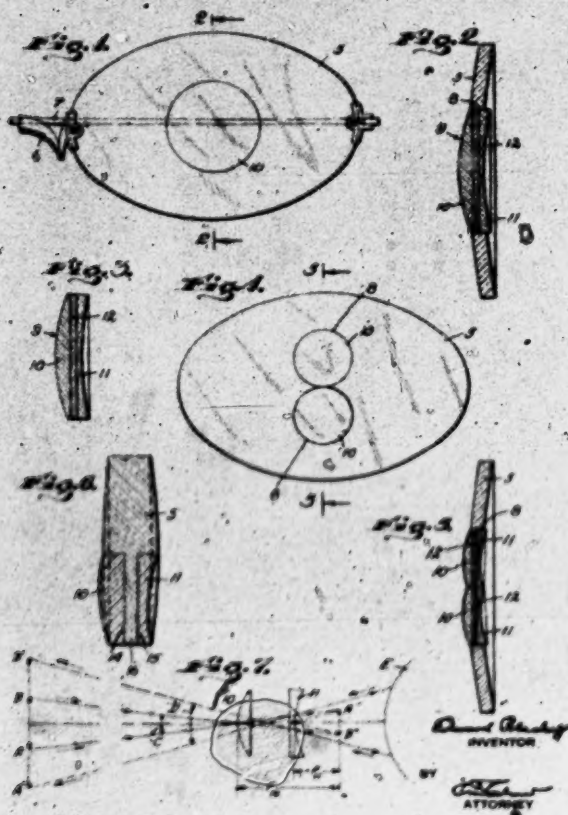
EDWARD POLACKOFF, ATTORNEY.

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Dec. 31, 1935.

E. POLACKOFF  
TELESCOPIC BIFOCAL LENS  
Filed July 9, 1935

2,025,893



941

Patented Dec. 31, 1935

2,025,893

## UNITED STATES PATENT OFFICE

2,025,893

## TELESCOPE OPTICAL LENS

Edward Polackoff, New York, N. Y., assignor to  
Univis Lens Company, Dayton, Ohio, a corporation of  
Ohio

Application July 9, 1932, Serial No. 20,446

9 CLAIMS (Cl. 88-34)

The present invention relates to lenses and more particularly is concerned with bifocal lenses adapted to eye glass constructions.

The invention has as its object to provide in connection with a regular eye glass around for vision adjustment smaller minor lenses secured in spaced relation thereto and in alignment so that the retinal image is increased in size when glasses are utilized by people whose eyes have subnormal near vision after correction of the eyes with regular lenses.

The invention has as a further object to provide a telescopic bifocal lens having a distant and-near or minor lenses secured in spaced portions of a major crown lens the distant correction being formed into the crown lens and reading vision derived through the use of the spaced minor lenses, the major lens disposed at its anterior portion of the major lens being of convex or positive power and the minor lens at the posterior position of the major lens being of concave or negative power.

The invention has as a further object the provision of a telescopic bifocal lens having a major lens around for vision adjustment comprising a transversely disposed bore in which an optical object is secured comprising a pair of spaced minor lenses, the minor lens disposed at the forward portion of the major lens being of positive power and in optical alignment with the minor negative power lens at the posterior portion of the major lens while the front plates of the positive and negative power minor lenses substantially coincide at the back of the rear-most portion of the major lens.

According to my invention, in a telescopic bifocal lens and a pair of minor lenses, I provide the arrangement in which the major lens has been around for vision adjustment and disposed at its anterior portion is a minor lens of positive or convex power having its optical axis in alignment with the optical axis of a crown lens of negative or concave power attached to the posterior portion of the major lens, the convex space between and the rear of the minor lens being such that a telescopic vision effect is obtained without requiring adjustment of the lenses in respect to each other on the part of the wearer.

The foregoing and other features of the present invention are shown in the accompanying drawings in which:

Fig. 1 is a front elevational view of the lens of an eye glass construction according to the present invention.

Fig. 2 is a sectional view on the line 2-2 of Fig. 1.

Fig. 3 is a sectional view of the insert contemplated or faced to the major lens illustrated in Fig. 2.

Fig. 4 is a front elevational view of a trifocal lens according to the invention.

Fig. 5 is a sectional view on the line 5-5 of Fig. 4.

Fig. 6 is a sectional view of a slightly modified form of telescopic bifocal lens according to the invention.

Fig. 7 is a schematic view of the telescopic bifocal lens according to the invention.

Referring to the drawing, 1 designates one lens of a pair of main or major eye glasses suitable represented by a bridge 2 and each provided with a removable temple or arm 3 appropriately secured to the eye glasses in position on the nose of the wearer.

According to the invention, the herein disclosed bifocal lens is adapted to be utilized by people whose eyes have subnormal vision which may be corrected with regular lenses and the method comprehends the provision of a bifocal eye to increase the size of the retinal image in eyes having subnormal near vision after being corrected with regular lenses. In this connection, the major or crown lens 4 of the eyeglass frame, having, as here shown, a single lens around for vision correction or adjustment and is illustrated in Figs. 1 and 2 each major lens being provided a transverse disposed bore 5 adapted to receive an optical insert, suitably designated 6, which comprises two spaced minor lenses 7 and 8.

As is fully shown in Figs. 1 and 2, the insert 6 is adapted to be secured in the bore 5 of the major lens 4, the insert 6 having an index 9 and 10 and 11 and 12 and 13 and 14 and 15 and 16 and 17 and 18 and 19 and 20 and 21 and 22 and 23 and 24 and 25 and 26 and 27 and 28 and 29 and 30 and 31 and 32 and 33 and 34 and 35 and 36 and 37 and 38 and 39 and 40 and 41 and 42 and 43 and 44 and 45 and 46 and 47 and 48 and 49 and 50 and 51 and 52 and 53 and 54 and 55 and 56 and 57 and 58 and 59 and 60 and 61 and 62 and 63 and 64 and 65 and 66 and 67 and 68 and 69 and 70 and 71 and 72 and 73 and 74 and 75 and 76 and 77 and 78 and 79 and 80 and 81 and 82 and 83 and 84 and 85 and 86 and 87 and 88 and 89 and 90 and 91 and 92 and 93 and 94 and 95 and 96 and 97 and 98 and 99 and 100.

As shown in Fig. 3, the insert consists of a crown lens 10 around for vision correction or adjustment and is illustrated in Figs. 1 and 2 each major lens being provided a transverse disposed bore 5 adapted to receive an optical insert, suitably designated 6, which comprises two spaced minor lenses 7 and 8.

As shown in Fig. 4, the insert consists of a crown lens 10 around for vision correction or adjustment and is illustrated in Figs. 1 and 2 each major lens being provided a transverse disposed bore 5 adapted to receive an optical insert, suitably designated 6, which comprises two spaced minor lenses 7 and 8.

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convex or positive face while minor lens 11 has a concave or negative posterior face. Accordingly convex lens 10 is of positive power and the concave lens 11 of negative power.

23 The insert 9 is bodily arranged in bore 8 of the major lens and appropriately cemented or fused in a manner well known in the art and as shown in Fig. 2. The convex lens 10 is disposed at the anterior part 6 of the major lens while the concave lens 11 is arranged at the posterior portion of the major lens, the minor lenses 10 and 11 having their optical axis in alignment and having their focal planes substantially coinciding as is evident from Fig. 7 in which the minor lenses 10 and 11 are so spaced apart that their focal planes coincide.

24 In Fig. 3, the distance designated  $F_0$  is focal length of the convex lens 10. The focal length of the concave lens is the distance represented by  $F_1$ . The object to be magnified is designated BA and is generally located at a distant point, or stated in another way, a distance from the convex lens many times the focal length thereof. The angle of the rays that the object subtends is designated C. Three rays are transmitted to the convex lens and would form an image A' B' if the minor concave lens 11 were not a part of the optical system. The rays transmitted through the positive lens 10 however reach the minor concave lens 11 and are slightly deflected outwardly thereby after which they travel into the eye E. Consequently the line of sight or the image in the eye seen is along the deflected rays emanating from the concave lens. Hence object BA could be seen as a vertical and enlarged image B' A'. It follows therefore that the angle D that the image subtends is greater than the angle C subtended by its object. Hence the image of the object is magnified and the extent of the magnification is dependent upon a ratio of the focal lengths of the minor lenses or expressed mathematically as

$$\frac{F_0}{F_1} = \frac{\text{Angle D}}{\text{Angle C}} > 1.$$

25 In the form according to Figs. 4 and 5 a trifocal lens is illustrated, the major lens 5 having been provided with two transversely disposed bores as 5 each adapted to receive optical inserts of the type illustrated in Fig. 3, the upper insert having been corrected for distant vision, the lower insert for near vision, while the major lens 5 has been initially ground for vision adjustment or correction.

26 According to the form shown in Fig. 6, major convex lens 5 has been ground for vision correction or adjustment and appropriately secured to spaced faces 14 and 15 of reduced portion or member 10 of the major lens is the spaced minor lenses 10 and 11 of the type illustrated in the preceding views.

27 In all of the forms disclosed, the minor positive lens 10 may be considered as disposed or secured to the anterior portion of the major lens while the negative minor lens 11 may be considered as arranged or secured within the posterior portion of the main or major lens. In Fig. 6, minor lenses 10 and 11 may be of first glass and the major lens of second glass. If desired, reduced portion 10 may be eliminated and the minor lenses 10 and 11 placed or secured back to back. With the form according to Figs. 2 and 3, intervening filter or plate 12 may also be eliminated and the minor lenses placed or secured back to back.

28 It is to be understood that the first minor

lenses may be ground or cemented to spaced portions of the major convex lens, the distance correction being ground into the major lens, and reading vision is derived through the use of the minor lenses.

29 It is evident that according to the invention a telescopic arrangement is provided in the use of a major lens and a pair of minor lenses having a predetermined bore at different powers such that a telescopic effect is produced. Accordingly provision has been made for decreasing the size of the retinal image in eyes having a subnormal near vision after having been corrected with regular lenses, thereby providing a telescopic arrangement having means securing an advancement in its respect to such effect to be made by the wearer.

30 I am aware that telescopic spectacles of one kind or another have been employed but these are cumbersome and require adjustment and at the same time do not supply the vision correction that is necessary in wearing the telescopic lenses to all eyes. I have provided the telescopic effect without losing advantage of the correction effect of the regular lenses and the telescopic effect is more pronounced because the eye has been accommodated to the use of the main lens which has been ground to suit the individual wearer.

31 While I have described my invention in detail and have referred to specific applications thereof, I do not intend that the embodiments herein disclosed shall be limited to such specific applications but intend that all matter contained in the above description of views in the accompanying drawing shall be interpreted as illustrative and not in a limiting sense.

I claim:—

1. In a telescopic bifocal lens the combination of a major lens ground for vision correction and including a transversely disposed bore, and an insert secured to the wall of said bore comprising minor lenses of collecting and diverging powers, said minor lenses having their optical centers in alignment and their focal planes substantially coinciding at the back of said major lens, the minor lens of collecting power being disposed in the anterior portion of said major lens, the minor lens of diverging power being disposed in the posterior portion of said major lens, the relative space between and the powers of said minor lenses being adjusted to produce telescopic vision with image magnification.

2. In a telescopic bifocal lens the combination of a major lens ground for vision correction and including a transversely disposed bore, and an insert secured to the wall of said bore, said insert comprising spaced minor lenses and an intervening transparent member secured to said minor lenses, the anterior minor lens of said insert being of positive power and the posterior lens of said insert being of negative power, said minor lenses having their optical centers disposed in alignment, the relative space between and the powers of said minor lenses being arranged to produce telescopic vision effect with image magnification.

3. In a telescopic bifocal lens, the combination of a major lens ground for vision correction and including a transversely disposed bore, and an optical insert secured to the wall of said bore and comprising a minor lens of positive power, a minor lens of negative power, and an intervening transparent member secured to adjacent faces of said minor lenses, said minor lens of positive power being disposed in the anterior portion of said major lens, said minor lens of negative power being disposed in the posterior portion of said major lens

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lens, the optical centres of said minor lenses being in alignment and having their focal planes substantially coinciding at back of the posterior portion of said major lens, the relative space between and the powers of said minor lenses being arranged to produce telescopic vision effect with image magnification.

4. In a telescopic bifocal lens, the combination of a major lens ground for vision correction and including a transversely disposed bore, and an insert secured to the wall of said bore and comprising a minor lens of positive power disposed in an anterior portion of said major lens and a minor lens of negative power disposed in a posterior portion of said major lens, said minor lenses having their optical centres in alignment and having their focal planes substantially coinciding at the back of the posterior portion of said major lens, the relative space between and the powers of said minor lenses being arranged to produce telescopic vision effect with image magnification.

5. In a telescopic bifocal lens, the combination of a major lens ground for vision correction and comprising a transversely disposed bore, and an insert secured to the wall of said bore, said insert comprising a transparent member, a minor lens of positive power secured to the anterior face of said member, a minor lens of negative power secured to the posterior face of said member, said minor lenses having an index of refraction greater than the index of refraction of said major lens, and said member, said minor lenses having their optical centres in alignment, the relative space between and the powers of said minor lenses being arranged to produce telescopic vision effect with image magnification.

6. In a telescopic bifocal lens, the combination of a major lens of crown glass ground for vision correction and having a transversely disposed bore, and an optical insert secured to the wall of said bore and comprising a transparent member of crown glass, a minor first lens of positive power secured to the anterior face of said member, a minor first lens of negative power secured to the posterior face of said member, said minor lenses having their optical centres substantially in alignment, the relative space between and the powers of said minor lenses being arranged to produce

telescopic vision effect with image magnification.

7. In a telescopic bifocal lens, the combination of a major lens ground for vision correction and having a transversely disposed bore, and an insert secured to the wall of said bore, said insert comprising a transparent member, a minor positive lens secured to the anterior face of said member, a minor negative lens secured to the posterior face of said member, said minor lenses having their optical centres in alignment and their focal planes substantially coinciding at the back of the posterior portion of said major lens, said minor lenses having an index of refraction greater than the index of refraction of said member and major lens, the relative space between and the powers of said minor lenses being arranged to produce telescopic vision effect with image magnification.

8. In a telescopic bifocal lens, the combination of a major lens ground for vision correction and having a transversely disposed bore, an insert secured to the wall of said bore, said insert comprising a transparent member, a minor lens of positive power secured to the anterior face of said member, a minor lens of negative power secured to the posterior face of said member, said minor lenses having substantially in alignment and having their focal planes substantially coinciding at the back of the posterior portion of said major lens, the index of refraction of said minor lenses being greater than the index of refraction of said major lens and member, said minor lenses being arranged in power and spacing to produce a magnified telescopic image of near objects.

9. The combination with a major lens having a transversely disposed bore, said lens being ground for vision correction for distant objects, a minor lens of positive power secured in the anterior portion and in the bore of said major lens, a minor lens of negative power secured to the posterior portion and in the bore of said major lens and spaced from said minor lens of positive power, the optical centres of said minor lenses being disposed in said alignment, the relative space between and the powers of said minor lenses being arranged to produce a magnified telescopic image of near objects.

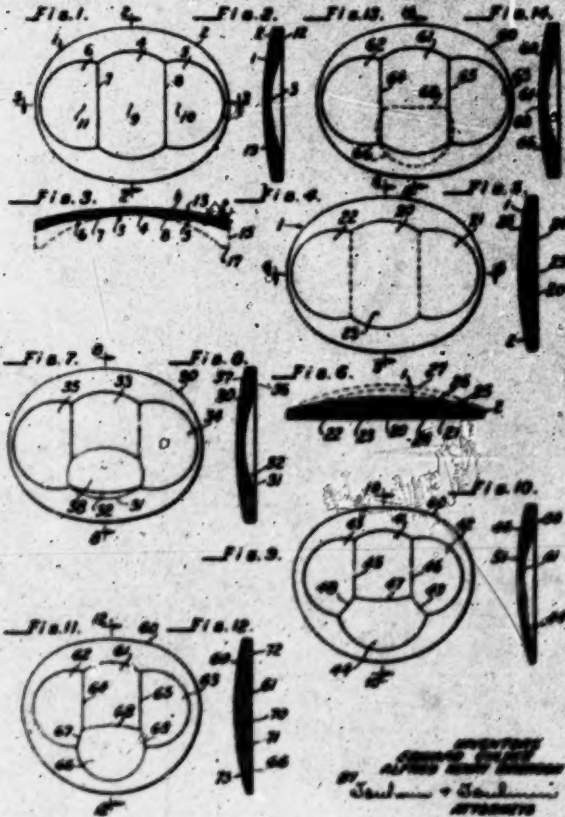
EDWARD POLACKOFF.

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Feb. 18, 1936.

E. CULVER ET AL.  
STEREALITE LENS  
Filed Oct. 9, 1934

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Patented Feb. 18, 1936

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## UNITED STATES PATENT OFFICE

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## EYEGLASS LENS

Edward Culver and Alfred Henry Harrison, London, England, assignors to United Kingdom Optical Company, Limited, London, England

Application October 9, 1934, Serial No. 947,576  
In Great Britain June 27, 1934

9 Claims. (Cl. 28-44)

This invention relates to eyeglass lenses, generally known as ophthalmic lenses, and especially to biconvex ophthalmic lenses wherein the thickness of high-powered lenses is reduced by the provision of a small diameter lens portion surrounded by a non-vision portion known as the carrying border.

One object of our invention is to provide a biconvex ophthalmic lens having multiple fields of the same power, so as to still further reduce the thickness required for a high-powered concave or convex lens as compared to the thickness required for an ordinary biconvex lens.

Another object is to provide a biconvex ophthalmic lens having a central field and other fields of the same power adjacent to the central field, thereby forming a plurality of visual fields whose size overall is much enhanced in one direction.

Another object is to provide a biconvex ophthalmic lens having a plurality of visual fields arranged adjacent to one another horizontally, these fields being of the same power and enabling the wearer to obtain a wide angle of view in a horizontal direction without requiring the angle of view to be particularly increased.

Another object is to provide a biconvex ophthalmic lens having fields of the same power adjacent to one another with a field of different power, so as to adapt it for both distant and near vision, the latter being either of a one-piece or fused construction.

Another object is to provide a biconvex ophthalmic lens having a plurality of fields of the same visual power but with differently-bowed ophthalmic centers, and surrounded by a non-vision portion.

Another object is to provide a method of making a biconvex concave lens consisting of preparing a border portion and arranging thereon a plurality of biconvex depressions of the same surface powers and intersecting one another.

Another object is to provide a method of making a biconvex convex lens consisting of preparing a carrying border, surface thereon a plurality of concave intersecting portions having the same surface curvature, preparing a button adapted to be forced into the multiple depressions thus made, and taking the button into the depressions. There can be an individual fused operation for each depression is made.

This invention is for the purpose of providing an improved lens for the correction of strong myopia and hyperopia where of refraction. It

is well known that many of the lenses at present in use for the correction of these high errors are very thick, heavy, ugly in appearance and often cause to the wearer considerable eye-gear vision except at the very center of the lens. It is the purpose of this invention to reduce the weight and to improve the appearance and optical performance of these high power lenses.

One method of obtaining some reduction in the weight of these lenses which is at present in use is to make them in biconvex form. This is done by removing glass from the peripheral portions of the lens by grinding a different curve on the margin of the lens from that at the center. This has the effect of cutting down the field of view and any great saving in weight can only be obtained by still further reducing the field. Further, at the edge of the field of these lenses a considerable aberration occurs and there is a large deviation of the line of sight, on passing through the lens. This deviation or prismatic effect is outwards with concave lenses and inwards with convex and increases as the line of sight moves away from the optical center of the lens.

Now in ordinary everyday vision the excursion of the eye from its position of rest is greatest and most frequent in the horizontal meridian. This invention provides lenses which are lighter in weight and which also have a wider horizontal field of view with less prismatic effect than those at present in use.

This is accomplished by dividing the horizontal field into three or more portions each with its own optical center.

In the drawings:  
Figure 1 is an elevational view of a single power biconvex concave lens according to my invention.

Figure 2 is a central vertical section along the line 2-2 of Figure 1.

Figure 3 is a central horizontal section along the line 3-3 of Figure 1, the dotted lines showing the thickness required for the lens if a single biconvex portion were used instead of the multiple biconvex portions provided by our invention.

Figure 4 is an elevational view of a single power convex biconvex lens according to my invention.

Figure 5 is a central vertical section along the line 5-5 of Figure 4.

Figure 6 is a central horizontal section along the line 6-6 of Figure 4, the dotted lines showing the thickness which would be required for

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the lens if a single biconvex portion were used instead of the multiple biconvex portions of my invention.

Figure 2 is an elevational view of a biconvex concave lens made of two kinds of glass fused together.

Figure 3 is a central vertical section along the line 3-3 of Figure 2.

Figure 4 is an elevational view of a biconvex concave lens made from the same kind of glass throughout, but having different curvatures to provide the differently-powered reading portions.

Figure 5 is a central vertical section along the line 5-5 of Figure 4.

Figure 6 is an elevational view of a biconvex concave lens according to my invention.

Figure 7 is a central vertical section along the line 7-7 of Figure 6.

Figure 8 is an elevation of a modified form of lens with an insert on the side opposite the ground surface having a property of ground depression.

Figure 9 is a section on the line 9-9 of Figure 8.

Referring to the drawings in detail, Figure 1 shows a biconvex concave lens according to my invention, as consisting of a body portion, generally designated 1, and divided into a border portion 2 and a visual portion 3. The border portion 2 is not used for vision, but is provided simply as a carrying portion to contain the visual portion 3.

The visual portion 3 consists of a plurality of areas 4, 5 and 6 arranged adjacent to one another and having the same surface curvature. The centers of the dividing lines 7 and 8 between these adjacent portions are straight when viewed by an observer directly in front of the lens. The reason for this straightness depends on the principle that two spherical surfaces of the same radii of curvature intersect along an arc whose projection on a plane parallel to their line of centers is a straight line. The intersecting fields 4, 5 and 6, therefore, have independent optical centers 9, 10 and 11 spaced apart from one another.

To make the biconvex concave lens shown in Figure 1, a blank of glass sufficient in size to make the body portion 1 is ground and polished with a tool of the proper curvature to make the concave surface of the border portion 2. The lens and tool may then be shifted relatively to one another and the top surfaces 4 and 5 similarly ground and polished. The border portion 2 may be provided with a top surface 12 of curvature appropriate to give a thin edge to the lens when the outer border 12 comes in to light. The lens has been ground and polished. It is not intended to imply that it is necessary to start by grinding the concave 2. Any other method may be adopted which produces the three fields 4, 5 and 6 in the positions shown.

In this manner, there results a biconvex concave lens with multiple fields adjoining one another. The problem of these multiple fields is solved by the reduction of the edge thickness of the lens by a continuous process. The great reduction possible by my invention is shown in Figure 1, where the dotted lines represent the cross-sectional dimensions of an ordinary biconvex concave lens of the same power, but having only a single biconvex area. The dotted edge 13 is of such thickness as to make such a lens unusable; consequently it has been the practice

hitherto to make the biconvex portion of small dimensions. In order to keep the edge thickness 13 at a minimum. By my invention, however, the biconvex area may be given a very wide extent, yet the edge thickness may be kept within limits smaller than those of a single biconvex lens with a much smaller biconvex area. It will be seen, furthermore, that if the dotted border portion 14 is centered (Figure 2) and the biconvex surface be carried directly out to meet the edge 15, then the latter will be still thicker and still more unusable; this would occur in an ordinary single-convex lens without any biconvex area whatever.

Thus by the provision of the multiple biconvex areas arranged side by side, I not only provide a lens which is attractive in appearance, but also overcome the mechanical action of the eye. It has been found by experimentation and observation over a large number of cases that human beings use their eyes to a much greater extent in horizontal directions than in vertical ones. Consequently, the eyeballs are rotated through a much wider angle of view horizontally than vertically. As a result the ideal biconvex lens should have a horizontal field which is much broader than the vertical field, thus coming in its ideal form of an elongated area. Such an area is provided by the lens of my invention, and without the excessive thickness which the "real biconvex" lens of the prior art necessitates. In the latter form of lens, the edge thickness was largely determined by the greater horizontal diameter of the lens than the vertical diameter; the border portion of the lens having been "convex" with a top having a curve surface so as to give an oval outline to the central biconvex area.

To make a biconvex concave lens according to my invention (Figure 4), the body portion 1 of the lens is prepared in the manner previously described in connection with Figure 1; multiple fields or concentric 16, 17 and 18 are formed in the body portion 1, these being of appropriate surface curvature to provide the requisite focal power, according to computations well known to those skilled in the art. These concentric 16, 17 and 18 are of the same curvature, hence, have straight lines of center intersection, as shown by the dotted lines in Figure 4. After the concentric 16, 17 and 18 have been ground, a glass button 19 of a higher index of refraction is then fused into this series of concentrics. When the surface 19 is ground over the entire biconvex side of the lens, the latter will be provided with portions 20, 21 and 22 having much higher focal powers than the border part of the body portion 1, due to the difference in power between the low-index phase which, in effect, are ground out of the body portion 1 and replaced by the high-index lenses fused into the body portion. The outer surface 23 is then ground to the proper curvature to give the necessary visual power as well as the appropriate edge thickness. The final elevation need not be delayed until all these dimensions are made.

It will be observed from Figure 4 that if the lens had been made with a single biconvex depression, such as indicated by the dotted line 24, and provided with the outer surface 25 corresponding thereto, the total center thickness of the lens for the same distance would be considerably greater and form a large bulging effect than occurs with my invention. The dotted lines in Figure 4 indicate the extra thickness required 26

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by this single biconvex portion of the prior art. To provide a biconvex convex lens with a bifocal portion, we may proceed in two different ways. In Figure 7 we show such a bifocal lens comprising the front bifocal portion, wherein

one of a different index of refraction is employed to provide the area of different power for near vision. In Figure 8, however, we show a bifocal lens of the "split" or "non-split" type, this consisting of glass of the same index of refraction throughout. The one-piece bifocal of Figure 9 depends for its action upon the provision of a different surface curvature for the near-vision portion from that of the distant-vision portions of the lens. To provide a biconvex convex lens, as shown in Figure 11, we utilize the principle of employing different surface curvatures in the construction, and then fill in the construction with a glass of a higher index of refraction.

The biconvex convex lens bifocal shown in Figure 7 is preferably made by providing the body portion 55 with a deep concave curve or concavity 51, this being of such curvature, as computed according to principles well-known to those skilled in the art, as to be suitable for reading vision in the completed lens. A glass bottom 52 of a higher index of refraction is then prepared and fitted to this concavity 51. In the construction operation, the lens is completed by surface grinding the multiple concavities 53, 54 and 55 of the curvature in the lens to match the same manner as the concavities 4, 5 and 6 (Figure 1), previously described. The convex curvature 56 of a lower index of refraction is then prepared and fitted to the portion of the lens occupied by the bottom 52 in such a manner as to extend throughout (Figure 6). Accordingly, when the border surface 58 and the outer surface 57 have been made, the resulting lens (Figure 7) will be provided with distant-vision portions 53, 54 and 55, together with a near vision portion 56 for reading or other near vision.

The bottom 52 can, if desired, be of the composite type in which the top part is made from glass of the same index as the major body portion. The top of the reading portion may then be made slightly convex instead of deeply concave. This bottom insert may also be placed in the front surface of the lens.

The one-piece biconvex convex bifocal shown in Figure 8 is prepared, during its earlier stages of construction, in much the similar manner as the single vision biconvex convex lens shown in Figure 1. According to this procedure the body portion 65 is provided with concavities 61, 62 and 63 of like curvature suitable for the distant vision requirements of the singular vision. Following this, the lens is provided with an additional concavity 64 adjacent to the concavities 61, 62 and 63, but of a different surface curvature. The surface curvature of the portion 64 is either lower or higher than the surface curvature of the portions 61, 62 and 63, so that a near-vision focal power is provided for the portion 64 in order to adapt it to near vision requirements. It will be observed that the dividing lines 66 and 67 between the portions of the same surface curvature are straight lines for the reasons previously given, whereas the dividing lines 67, 68 and 69 between these portions and the near-vision portion 64 are curved lines, due to the different surface curvature of the latter. The lens is then provided with a border surface 69 and an outer surface 67 in the manner previously described.

Thus is provided a bifocal lens having a plurality of distant-vision portions intersecting one another on straight lines, and a near-vision portion intersecting these on curved lines. All of these portions have independently-focused optical centers.

In its early stages, the biconvex convex bifocal lens shown in Figures 11 and 12 is made in a manner somewhat similar to that of the one-piece bifocal shown in Figure 9. A body portion 69 is provided with suitable concavities 61, 62 and 63, whose curvatures are based upon the same principles and computations discussed in connection with Figure 4. These concavities are of the same surface curvature and consequently intersect on the straight lines 66 and 67. A concavity 64 of deeper or stronger surface curvature is then ground in such a manner as to intersect the concavities 61, 62 and 63, the intersections being along the curved lines 67, 68 and 69. A glass bottom 70 of a higher index of refraction is then prepared and fitted into the series of concavities previously described, and the exposed common surface 71 ground with a curvature suitable for the border portion 72, after which the opposite side 73 may be surfaced in accordance with the same principles discussed in connection with Figures 4 to 6. Thus the biconvex convex bifocal of Figure 11 is made up of a plurality of portions adapted for distant vision, together with a portion suitable for near vision, each of these portions having its own optical center. Consequently the hyperopic or aphakic wearer of this lens will be provided with distant and near vision portions suited to his own requirements.

Accordingly, we have provided a biconvex aphakic lens with multiple portions for distant vision, thereby providing a wide horizontal field of view with a moderate thickness of lens. Our lens will, therefore, be especially suitable for the visual requirements of persons requiring strong convex or convex lenses. Such lenses are called for in cases of myopia and hyperopia, as well as in post-cataract or aphakic eyes. It will be obvious that, while these multiple fields have independent optical centers, these centers are not necessarily located upon the same line. The number of fields is not necessarily limited to three, but can be increased to five or more, as is most suitable in view of the particular requirements of the wearer.

It will be understood that we desire to comprehend within our invention such modifications as may be necessary to adapt it to varying conditions and uses.

Having thus fully described our invention, what we claim as new and desire to secure by Letters Patent is:

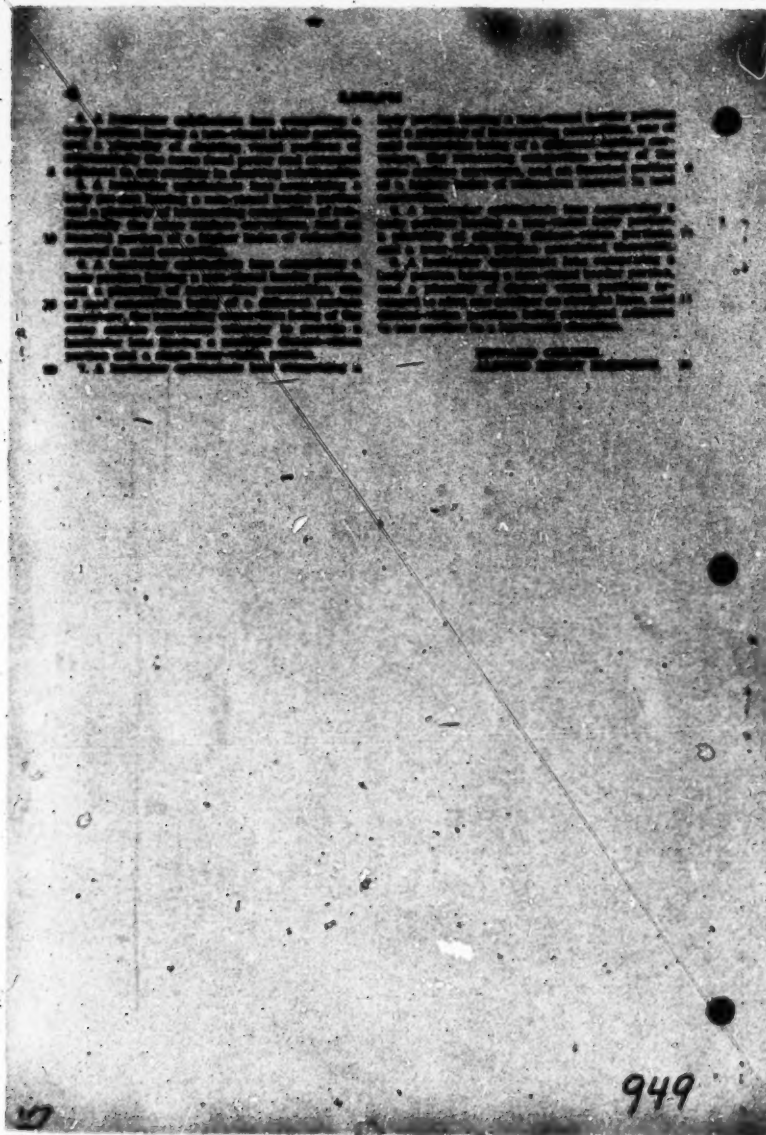
1. A biconvex aphakic lens comprising a body portion having a non-visual border portion, and a plurality of visual portions of substantially the same focal power, said visual portions comprising a central field and lateral fields abutting said central field on the opposite side thereof.

2. A biconvex aphakic lens comprising a body portion having a non-visual border portion, and a plurality of abutting visual portions of substantially the same focal power and arranged adjacent to one another.

3. A biconvex aphakic lens comprising a body portion having a non-visual border portion, and a plurality of abutting visual portions of substantially the same focal power and arranged horizontally adjacent to one another.

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Dec. 19, 1939

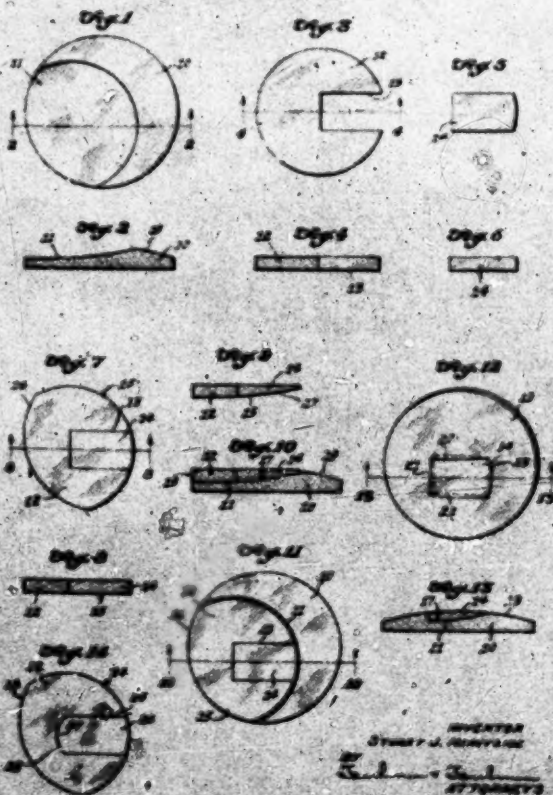
S. J. HEAVYSIDE

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Filed April 26, 1937

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INVENTOR

STUART J. HEAVYSIDE

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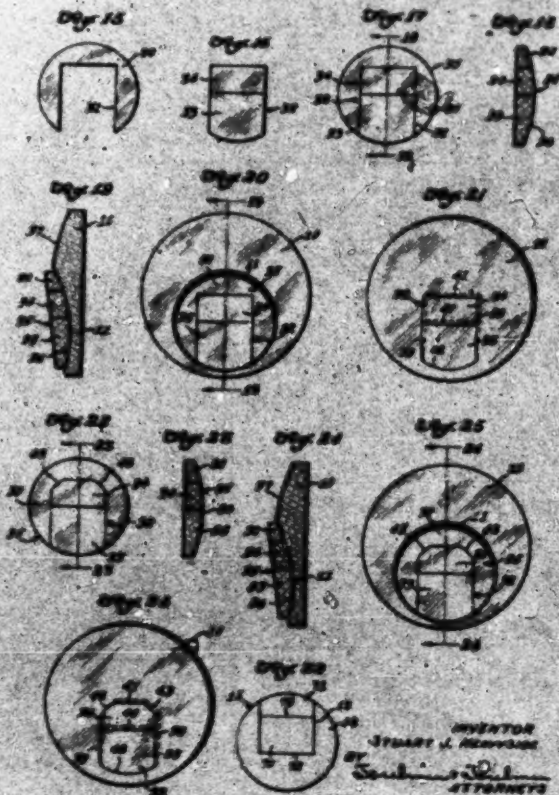
Dec. 19, 1939.

S. J. HEAVYSIDE  
LENS

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Filed April 26, 1937

2 Sheets-Sheet 1



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Patented Dec. 19, 1939

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# UNITED STATES PATENT OFFICE

LENS

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corporation of Delaware

Application April 26, 1937, Serial No. 133,990

1 Claim. (Cl. 35-34)

This invention relates to ophthalmic lenses, and in particular, to multifocal lenses, having prismatic powers in the segments.

One object of this invention is to provide a multifocal lens having a predetermined prismatic power in the segment thereof, this segment being joined into the major portion of the lens.

Another object is to provide a fused multifocal lens having a prismatic segment of a different index of refraction secured within the major portion of the lens.

Another object is to provide a multifocal lens having a major portion with a centermark and a lenslet secured therein, consisting of a carrying member and a segment inserted in a recessed portion formed in it as to provide a predetermined prismatic power in the segment.

Another object is to provide a multifocal lens having a major portion with a centermark and a lenslet secured therein, having a portion cut away from the edge thereof and exhibiting a segment of a different index of refraction so as to cause the segment to have a prismatic power.

Another object is to provide a multifocal lens consisting of a major portion with a centermark and a lenslet secured therein having an outer outermost portion with a multiple segment having parts of different indices of refraction, so as to provide prismatic powers of predetermined amount in one or more of said segment parts.

In the drawings:  
Figure 1 is a front view of a major portion with a centermark thereon for making the multifocal lens of this invention.

Figure 2 is a section along the line 2-2 in Figure 1.

Figure 3 is a front view of a carrying member for insertion in the centermark of Figure 1.

Figure 4 is a section along the line 4-4 in Figure 3.

Figure 5 is a front view of a segment for insertion in a recessed portion of the carrying member of Figure 3.

Figure 6 is a side view of the segment shown in Figure 5.

Figure 7 is a front view of the assembled lenslet with the segment of Figure 5 secured in the carrier member of Figure 3, and cut to a shape suitable for insertion in the centermark of Figure 1.

Figure 8 is a section along the line 8-8 of Figure 7.

Figure 9 is a section similar to Figure 8, but

showing the bottom where the centermark intersecting surface has been ground.

Figure 10 is a section along the line 10-10 of Figure 11, showing the bottom after being secured within the centermark of Figure 1.

Figure 11 is a front view of the multifocal lens blank of this invention, after the bottom has been secured in the centermark.

Figure 12 is a front view of the completed lens made by surfacing the blank shown in Figure 11.

Figure 13 is a section along the line 13-13 in Figure 12.

Figure 14 is a view similar to Figure 7, but showing a slightly modified form of segment.

Figure 15 is a front view of a modified form of a carrier member.

Figure 16 is a front view of a multiple segment for insertion in the carrier member of Figure 15.

Figure 17 is a section along the line 17-17 in Figure 16.

Figure 18 is a section along the line 18-18 in Figure 17.

Figure 19 is a front view of a trifocal lens blank after the bottom of Figure 17 has been secured within the centermark of the major portion.

Figure 20 is a front view of a completed lens made by surfacing the blank of Figure 19.

Figure 21 is a view of a bottom similar to Figure 17, but of a slightly modified form.

Figure 22 is a section along the line 22-22 in Figure 21.

Figure 23 is a section along the line 23-23 in Figure 22.

Figure 24 is a front view of a trifocal lens made by surfacing the blank of Figure 23.

Figure 25 is a front view of a carrier member of a further modified form.

Figure 26 is a front view of a multiple segment for insertion in the carrier member of Figure 25.

Figure 27 is a front view of a completed lenslet after the segment of Figure 26 is secured within the carrier member of Figure 25, and cut to a shape suitable for insertion in the centermark of the major portion.

Figure 28 is a section along the line 28-28 in Figure 27.

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Figure 20 is a section along the line 20-20 in Figure 19.

Figure 21 is a front view of a truncated lens blank after the segment of Figure 19 has been laid into the center of the major portion.

Figure 22 is a front view of the finished lens made by superimposing the blank of Figure 21, the segment prism being in a horizontal position.

Figure 23 is a front view of a completed lens, showing these segments have been turned in to the convex portion of the carrier member.

Figure 24 is a section along the line 24-24 in Figure 23.

Figure 25 is a section on the line 25-25 in Figure 23.

Figure 26 is a front view of a quadrilateral lens blank made by turning the bottom of Figure 19 to the convexity of the major portion.

Figure 27 is a front view of a quadrilateral lens made by turning the blank of Figure 26.

Figure 28 is a front view of a finished lens for providing a cross segment with its base up or down.

In general, the truncated lens of this construction consists of a major portion having a curvature in which to receive a composite lens. This composite lens consists of a carrier member having a convex portion or set of radii extending from the outer toward the center, and a segment of corresponding radius turned within the convex portion or set. When the bottom edge of the blank is flattened to a convex curvature, the segment will possess a prismatic power, as well as a field power. The segment is preferably made of a higher index of refraction than the major portion, and the carrier member of the same index of refraction as the major portion.

With the drawings in Figures 1 to 28, done in sequence with the base of the prism toward the left, it will be understood that the base may be placed vertically, horizontally or obliquely to any desired direction. In Figures 13 to 28 is shown a trifocal lens made in the same manner.

With the segment prism base in a vertical direction, in Figures 29 to 32 is shown a trifocal lens with the segment prism base in a horizontal direction. Figures 33 to 36 show a quadrilateral lens with the segment prism base in a horizontal direction.

Referring to the drawings in detail, Figure 1 shows a major portion in cross line 1-1 having a concave 11, cylindrical surface, a carrier member 12 is prepared with a convex portion or set 13 extending radially from the edge (Figures 2 and 4). Within this convex portion 13 is secured, as by facing, a segment 14. The carrier member 12 is preferably of the same index of refraction as the major portion 11, whereas the segment 14 is preferably of a higher index of refraction.

After the segment 14 has been secured to the carrier member 12 to form the lens, generally designated 15, the edge of the bottom 16 thus formed is not used as of 16 (Figure 1) so as to be of a proper outline for mating with the concave 11 of the major portion 11. The surface 17 is then given a curvature substantially corresponding to the surface of the concave 11, and the bottom 18 is then added, as by facing, with the major portion 11. Figures 10 and 11. The bottom edge 18 of the major portion 11 is then extended to a radius in Figure 12, giving the finished lens shown in Figures 13 and 14.

Due to the fact that the carrier member 12 is

of substantially the same index of refraction as the major portion 11, it disappears and becomes indistinguishable from the major portion 11 so that the segment 14 alone becomes visible. This segment 14, however, now presents three edges 19, 20 and 21, having curved surfaces, and a fourth edge 22 without a curvature. The segment 14, therefore, possesses a prismatic power due to the positive difference between the edges 19 and 21, the base of the prism being in the direction of the edge 22.

In Figures 23 and 24 the base of the segment prism 14 is shown to be in a horizontal direction and to the left. By turning the segment 14 to the convexity, or by turning the set 13 to an oblique direction in the bottom 18, the segment may be given a power with an oblique direction instead of purely horizontal.

The completed Figure 25 shown in Figure 26 consists of a carrier member 12 and a convex edge 13, as before, but the set 13 and segment 14 secured thereto are of different outline. The segment 14 has a curved end 23 and the set 13 a curved edge 24 corresponding thereto. The appearance of the finished lens made by using the bottom 18 will be similar to that of Figure 13, except that 1. at edge 21 will be curved instead of flat.

The convex line of Figure 19 to 22, inclusive, is formed by providing a carrier member 25 with a concave 26, similar to the set 13 and cutting portion 13 of Figure 3. Secured within the set is a segment, generally designated 27, having portions 28 and 29 of different indices of refraction, the completed lens 30 being shown in Figures 31 and 32. This prism is oriented to follow with a convex 31, substantially the same as that of the concave 26 in the carrier portion 25 and curved thereof as by facing. The completed blank is shown in Figures 33 and 34. Finished lens is made from the blank by superimposing the bottom edge 31 of the major portion 25 to the convex curvature, the finished lens being shown in Figure 35.

Between the carrier portion 25 is of substantially the same index of refraction as the major portion 26, it disappears and becomes merged with the major portion 26. The segment portions 28 and 29, however, being of different index of refraction, stand out and present the appearance shown in Figure 35. It will be seen that these segment portions have curved lateral edges 32 and 33 both being disclosed. A disclosed edge portion 34 approximates the segment portions 28 and 29. The segment portion 28 presents a top edge 35, thereby having a shoulder there the direction of the segment 28 is at the top (Fig. 35). The base of the prism in the carrier portion 25 and 26 are visible, between segment prism base-up edge. The curved edge 36 at the bottom thereof is toward a shoulder and surface, substantially with the major portion 26.

When the segment portion 28 is of a high index of refraction and the segment portion 29 is of an intermediate index of refraction relatively to the major portion 26, the lens of Figure 31 will be a trifocal lens having prismatic intermediate and near portions 28 and 29, respectively, the prism being built-up in both segments 28, however, the portion 28 is given a higher index than the portion 29, the portion 29 will be a near portion and the portion 28 an intermediate portion. The trifocal lens shown in Figure 35 to 36 is similar to the trifocal lens shown in



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9,183,888

carrier member secured in edge-to-edge relationship along their joint edges within said cutaway aperture at each end of said segments having opposite edges of different thickness whereby to provide multiple prismatic segments, said segments having shouldered edges on both of its long sides and on one of its short sides buried within said major lens and an unshouldered edge on the other short side substantially merging with said major lens.

2. In a multi-facet lens blank, a major lens having a centerbank and a button secured in said centerbank, said button exhibiting a carrier member of substantially the same refractive index as the major lens, said carrier member having a horizontally elongated cutaway aperture there-

through extending outwardly to an edge thereof, the length of said aperture horizontally being greater than its width vertically and a segment with opposite vertical edges of different thickness secured within said cutaway aperture and having opposite edges at an edge of said carrier member, said segment having buried shouldered edges on both of its long sides and on the short side nearest the center of said carrier member, whereby to provide a prism segment bifacial lens blank which may be surfaced into a finished lens merely by grinding away the blank surface by a thickness approximately equal to the thickness of said exposed segment shoulder in addition to suitably surfacing the opposite side of the blank.

STUART J. HEAVYSEIDE.

956

April 24, 1934.

V. H. HANCOCK  
LENS

No. 19,142

Original Filed Nov. 15, 1929

Fig. 1.



Fig. 3.



Fig. 2.



Fig. 4.



Fig. 8.



Fig. 9.



Fig. 10.



Virgil H. Hancock  
- His Ex. Co.

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Released Apr. 24, 1934

Re. 19,142

## UNITED STATES PATENT OFFICE

19,142

12788

Virgil H. Hancock, New Orleans, La., assignor to  
The Univis Corporation, Dayton, Ohio, a cor-  
poration of Delaware.

Original No. 1,570,497 dated September 4, 1925,  
Serial No. 297,437 November 13, 1928. Appli-  
cation for extension February 17, 1933, Serial No.  
437,748

2 Claims. (Cl. 36-55.)

This invention relates to refractive lenses and has particular relation to an improved construction of lens of the trifocal type.

One of the primary objects of the present invention is the provision of a lens of the trifocal type, which will render a plurality of lens in satisfactorily correct the vision of the wearer, and provide for clear distant vision, intermediate distant vision and near vision.

A further object of the invention is the provision of a trifocal lens which may be readily or easily furnished with a different amount of grinding and facing later.

Another object of the invention is to provide a lens which will embody an upper distant vision portion, an intermediate vision portion and a lower reading or near vision portion, so that the wearer may obtain clear vision at a distance of approximately seven or more feet through the upper distant vision portion, clear vision at a distance of approximately two or three feet through the intermediate vision portion, and clear reading or near vision at approximately fourteen inches.

Another object of the invention is to improve trifocal or multifocal lenses through the employment of glass of different indices of refraction.

A further object of this invention is the provision of an improved lens of trifocal character, which will tend to minimize prismatic displacement across the boundary lines between the various portions of the lens, which displacement ordinarily causes an apparent elevation of objects to the great annoyance and actual discomfort of the wearer of the trifocal lenses. In my improved trifocal I provide a two-part vision lens or more desired within a frame or support, which in a major lens, these two parts being composed of glasses whose indices of refraction differ from each other and from that of the major lens; these two parts being joined together in such a manner without any overlap relative to each other, and bonded there together in such a manner that there is provided the widest lateral field of view within each part consistent with the total size of the major lens as a whole. The combination of prismatic effect referred to is thus accomplished by being able to provide three distinct lens and effectively located, namely, first, but maintain a small portion of the major lens as a whole. The said major lens is an improved trifocal lens, contained within a frame or support, having a single radius of curvature over the entire extent consistent to both parts.

With the above and other objects in view, the

invention further includes the following novel features and details of construction to be hereinafter more fully described, illustrated in the accompanying drawing and pointed out in the appended claims.

In the drawing—

Figure 1 is a view of a completed trifocal lens with the various indices of glass indicated therein.

Figure 2 is an enlarged sectional view on the line 2-2 of Figure 1.

Figure 3 is a view of the major lens.

Figure 4 is a section on the line 4-4 of Figure 1.

Figure 5 is a view of the upper segmental lens.

Figure 6 is a view of the lower segmental lens.

Figure 7 is a view showing the upper and lower segmental lenses arranged to form a minor lens and ready for application to the major lens.

Figure 8 is a sectional view on the line 8-8 of Figure 7.

Figure 9 is a view of the major and minor lenses arranged preparatory to grinding.

Figure 10 is a section on the line 10-10 of Figure 9.

Referring to the drawing in detail wherein like characters of reference denote corresponding parts, the reference character 1 indicates what may be termed the major lens, the diameter of which is greater than the diameter of the finished lens, as may be readily seen by comparison of Figures 1 and 3 of the drawing. This major lens is marked 1.25 and is formed with contour 2 c. This kind of contour is ordinarily intended for the reception of a glass, non-contour lens. In the present instance, however, the contour 2 c is for the purpose of accommodating a compound minor lens, the upper portion 2 of which is marked 1.40, while the lower portion 3 is marked 1.45.

Different indices of refraction are thus employed, the upper portion or segment 2 of the minor lens being marked 1.40, the lower portion 3 being marked 1.45, while the major lens is marked 1.25. The reason thus provided may be found and ground with smooth or rounded surfaces on both sides the upper portion 2 providing the usual distance lens, the portion 3 providing an intermediate vision lens which is suitable for use at a distance of two or three feet, while the portion 1 provides a reading or near vision lens for use at approximately fourteen inches.

For a better understanding of the invention

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IN THE UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF OHIO,  
CINCINNATI.

UNITED KINGDOM OPTICAL COMPANY,  
LIMITED, AND THE UNIVIS LENS  
COMPANY,

Plaintiffs,

vs.

THE W. H. BARNES COMPANY,

Defendant.

Exhibit M  
U. S. District Court  
S. D. of N. Y.  
June 7, 1941  
CIV 10-372

RECEIVED  
May 21, 1941.

KEVIN, DISTRICT JUDGE:

This is an action for injunction and accounting, based upon the alleged infringement by the defendant company of a patent belonging to, and, under certain agreements, controlled by plaintiffs. The patent in question was granted to Watson and Galt, on June 14, 1927, and is No. 1,832,200. According to the patent, the "invention relates to lenses particularly those which are used with spectacles and the like." The bill is in the usual form, charging infringement by the defendant (correct name The W. H. Barnes Company), in that it "did make, use and sell, and did cause to be made, used and sold, and is now making, using and selling, \*\*\* sundry lenses, embodying therein the invention set forth and claimed in said letters patent" within this District. The answer denies that defendant "has done any of the acts complained of" or does set forth, and denies that defendant "has any intention of doing them." There is no issue made as to the validity of the patent. It was admitted at the trial and in the record, on behalf of the defendant company, that it caused to be manufactured and sold, within this District, one-half of a pair of lenses embodying the elements of the patent in suit. The patent, and particularly the claims thereof, call for "a fixed bifocal lens" or a "bifocal lens." It is apparent that the patent was intended to cover the finished article, ground and polished and ready to be used by the consumer or wearer. Lenses are first manufactured in the form of "blanks" such as plaintiffs Exhibit No. 1 in this case. The "blank" however, is not in form to be used as an operating lens. To be put in use, competition, the "blank" must be "finished" and "ground" to fit the eye of the patient or to make the lens comply with the prescription of the optician prescribing it. After this further manufacturing operation a lens then takes on the appearance of the lens which is produced by the

-2-

in this case. It is absolutely essential that this further manufacturing process take place in order that the rough "blank" may be transformed into the finished product. The making of the "blank" is but a step in the manufacture of the lens which the patent is meant to and does cover. The claims are broad enough to cover the "blank" as well as the finished eyeglasses or lens. Plaintiffs, especially The Univis Lens Company, located at Dayton, Ohio, are engaged in the manufacture and sale of the patented lenses covered by this patent. The Univis Lens Company also grants territorial licenses to opticians located in many cities in the United States. It is essential to Plaintiffs' business that only persons of the highest skill be licensed to perform the manufacturing work to be done on the blanks necessary to produce lenses in accordance with the prescription in each individual case. In pursuance of its policy, plaintiff, The Univis Lens Company, granted a license to The L.H. Prince Company for the territory comprising Dayton and Cincinnati. The Univis Company supplies the patented lenses in its semi-finished form, known as "blanks" to persons to whom it has issued its license, among others, the Prince Company, for completion of the manufacturing and sale of the lenses thus finished. The licensee has exclusive rights in his territory; he completes the necessary steps to conform the "blanks" to the prescription of the oculist given to the patient, that is, by grinding, edging and polishing and doing whatever else may be necessary to put them in final and proper form to make them usable and to complete them as a finished article as covered and contemplated by the patent.

As the views entertained by the Court are fully expressed in the "Findings" and "Conclusions" hereinafter set forth, it is unnecessary to discuss further details, as disclosed by the record.

Upon a consideration of all of the evidence in the case, the Court has arrived at the following:

#### FINDINGS OF FACT.

1. Patent No. 1,432,808 is valid. It is infringed by the pair of blue glass eyeglasses, plaintiffs' Exhibits Nos. 7 and 8, which defendant had manufactured and sold within the district of this Court prior to the filing of the Bill of Complaint.

2. Plaintiffs have established a system of licenses by which the licensee is restricted to securing the blanks from the plaintiffs,

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... within the licensed territory and selling ...  
... as manufactured in the licensed territory to cus-  
... only.

... was publicly advertised in the ...  
... licensees of the patent in suit; and defend-  
... .

... of Pittsburgh supplied the defendant only complete  
... .

... American subject for any supplied supplying blanks  
... without the authority of the patent or the licensees.

... issued to and no one was to enter a license nor an  
... for the manufacture, use and/or sale  
... of the patent in suit.

... secure its blanks en-  
... the patent in suit from the plaintiff's  
... by the plaintiffs.

... Exhibit No. 1, contains the elements of the  
... is a word thereby, but is not a complete specifying  
... operations in order to make the finished  
... article as contemplated by the patentee in his patent.

... plate granitic lens, plaintiff's Exhibit No. 2, which  
... to a prescription, polished and edged, is within  
... of the patent in suit and is covered by the plaintiff's error.

10. The finishing of the blank into a usable lens by grinding  
... polishing and edging is an act of manufacturing and is  
... part of the manufacture to make the eyeglass lens a usable  
... article for wearing a wearer, to whose optical prescription it has been  
... .

11. The license system of the plaintiffs is necessary to the  
... of the patent by the plaintiffs to protect the public and the  
... of the public and any purchase and when the eyeglass lenses covered  
... of the patent in suit, as the blanks furnished by the plaintiffs must be  
... by licensees-manufacturers of high skill according to the individual  
... prescriptions of each customer in the locality of each licensee.

12. The license system of the plaintiffs is a necessary and  
... valuable part of the enjoyment of the plaintiffs of the patent in suit.

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—4—

[illegible]

10. The manufacturing licenses are are to the plaintiffs  
the doing of the manufacturing operations.

18. The complete profit of the enterprise is not awarded  
with the licensee who executed the arrangement of the license  
with the licensee; the satisfaction of the licensee and the absolute  
satisfaction of the licensee for the fact that we will the  
licensee license.

14. The control of the collection of those who shall exercise the collecting right, such as licensees, is given till to the defendant of the defendant, who, under the patent; and the defendant, through its agent, is to keep blank from unauthorized copies, has been cited to appear and show cause why it should not be held liable for the same.

16. The subject matter of the patent must be manufactured, first, by producing a blank, and, secondly, by finishing the blank by grinding, polishing and/or edging to make it a complete appliance as required and a patent for use by the wearer who is the ultimate purchaser.

1. The first group of people who are interested in the study of the history of the world are the historians. They are people who study the past and try to understand what happened and why it happened. They use a variety of sources, including books, documents, and artifacts, to reconstruct the past. They also try to understand the people who lived in the past and how they thought and felt. Historians are interested in the history of the world because it helps them to understand the present and the future.

1. The patent in suit is valid.
2. The patent in suit is infringed by the defendant's blue glass eyeglasses, plaintiff exhibits Nos. 7 and 8.
3. The patent in suit is infringed by the defendant's glasses, plaintiff exhibits Nos. 7 and 8.
4. The patent is infringed by the defendant securing an incomplete article, such as an unfinished blank, from unauthorized sources, such as the American Optical Company, and completing the act of manufacturing of the eyeglasses lenses by grinding to a prescription, polishing and coloring such blanks for use by a wearer.



3. Is the defendant purchased its blanks from the American Optical Company, an unauthorized source of manufacture of the blanks, the further manufacturing by grinding, polishing and edging by the defendant at Cincinnati without authority from the plaintiffs, thereby completing the manufacturing lot, constitutes an infringement of the patent in suit, was, as a matter of law, an invasion of the manufacturing rights under the patent and is an infringement under the doctrine of Cotton-Tile Co. v. Simmons, 106 U. S. 69, and Leeds & Catlin v. Victor, 215 U. S. 385.

4. Manufacturing on incomplete blanks, even if received from authorized sources by defendant, through grinding, polishing and edging to make a complete eyeglass called for by the patent in-suit was an invasion of the manufacturing rights of the plaintiffs under their patent and is an infringement under the doctrine of Cotton-Tile Co. v. Simmons, 106 U.S. 69, and Leeds & Catlin v. Victor, 215 U. S. 385.

5. Plaintiff's have a license system by which in Cincinnati the exclusive right of manufacturing to complete blanks into eyeglass lenses is licensed to The L. W. Prince Company, and this license system is a necessary incident to the business of the plaintiffs. The manufacturing by the defendant through grinding, polishing and edging of blanks purchased from sources, authorized or unauthorized, outside of Cincinnati, is an invasion of the manufacturing rights of the plaintiffs and an enjoyment of their license rights constituting an infringement under the doctrine of United States v. General Electric, 272 U.S. 480, 490.

6. The case of Keeler v. Standard Folding Bed Co., 157 U.S. 209, is distinguishable from the instant case. The decision in the Keeler case rests upon the facts of that particular case and the doctrine announced deals only where the patentee or his assignee or his right, title and interest to show the patentee has sold complete title and sold a completed article so that the purchaser of the completed article ready for use has a right to use and sell it in any territory of the patentee or his assignee as the patentee has parted with all title; whereas, in the present case, the blank purchased by defendant from American Optical Company was purchased from an unauthorized source, was in incomplete articles of manufacture needing further manufacture and the patentee had not parted with the patent title but only granted a restricted license; the act of further manufacturing in Cincinnati by the defendant was an infringement; first, because the

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blank was from an unauthorized source; second, whether it was from an unauthorized source or not, further manufacturing by the defendant was an invasion of the manufacturing rights of the plaintiffs reserved to themselves and their licensees; and, third, that the manufacture by the defendant on a blank, whether authorized or not, was an unauthorized invasion of the license system from which the plaintiffs derive profit pursuant to the doctrine of United States v. General Electric, 275 U.S. 475, 485, 490; Cottor-Tile Co. v. Simmons, 108 U. S. 89; and Leeds & Catlin v. Victor, 215 U.S. 325.

9. Plaintiffs are entitled to the decree as prayed for in their Bill, except that any damages assessed shall not be increased threefold. An order may be drawn accordingly.

(Signed) Kevin, J.

ATTORNEYS:

FOR PLAINTIFFS:

Maers, Tschir & Youlton,  
Dayton, Ohio.

FOR DEFENDANTS:

Chas. C. Benedict,  
Cincinnati, Ohio.

564 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

CERTIFIED COPY

United States of America

DISTRICT OF

I, \_\_\_\_\_, Clerk of the United States District Court in and  
for the \_\_\_\_\_ District of \_\_\_\_\_, do hereby certify that the annexed  
and foregoing is a true and full copy of the original \_\_\_\_\_.

now remaining among the records of the said Court in my office

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and

affixed the seal of the aforesaid Court at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_

Harry F. Rabe,

(Seal)

By \_\_\_\_\_

Deputy Clerk

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 565

Dealer's Name **STRASSER, E. BEANARD** Street Address **138 E. Federal** City and State, **Youngstown, Ohio**

Date **1/16/40** Order **12/19/40** Rep. **F. L. J.** Call No. **3** Salesman **Maloney**

Name Firm Members, Managers, Etc.

Upstairs <input type="checkbox"/>	Advertisements? <b>Yes</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <b>Shelby</b>		Average <input checked="" type="checkbox"/>
<b>FRANKLIN</b>			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

**15% for 80% Union & City**

Your estimate of number of pairs of Unis that would be a good monthly average for him

**5-6 Pairs**

Original Jobber <b>Deany Optical</b>	Univis Jobber <b>Deany Optical</b>	Attitude toward Univis Jobber <b>Good</b>
--------------------------------------	------------------------------------	---

Style of Univis Used <b>D.B.</b>	Attitude toward Univis <b>Good but inefficient</b>	Does He Make Effort to Use? <b>Yes</b>
----------------------------------	--	--

In his attention to his Univis record good, fair or poor?

**Fair - poor**

What is his principal difficulty?

**Low union clients; fine trouble**

Any Complaints?

No ☒

Yes ☐

Outlook for Future

**Univis. The Company is doing well**

In following up business:

**Use of Complaints in presenting Univis**

**in a simple, understandable manner**

**967**

566 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Company Name Acme, Paul Street Address 511 Toledo City and State CHICAGO  
1/1/40

Date 12/2/40 Dealer ☒ Optician ☒ Rep. ☒ Call No. Maloney  
 Station Firm Members, National, Etc.

Upstairs <input type="checkbox"/>	Advertiser? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Operator of Machine <input type="checkbox"/>
Downstairs <input checked="" type="checkbox"/>	Window Display <input checked="" type="checkbox"/>	Photobank <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Long <input type="checkbox"/>

Percentage of Use of Machine Knight 92  
 Your estimate of number of pairs of glasses that would be a good monthly average for him 5-7 Pairs

Principal Jobber <u>Darton</u>	Other Jobber <u>Hubb</u>	Other Jobber <u>Shaw</u>
--------------------------------	--------------------------	--------------------------

Style of Glasses Used <u>D</u>	Amount of Work Done <u>Good</u>	Amount of Work Done <u>Good</u>
--------------------------------	---------------------------------	---------------------------------

In his attention to his glasses record good, fair or poor? Fair - good

What is his principal complaint? Himself. No pairs in stock. Glasses are

Are/Completed ☒ No ☐ Yes ☐ Fair ☐ Good ☐ Poor ☐

Is following up suggested? Reprints of Chicago Herald  
Sings, that I have to tell you



Dealer's Name

Street Address

City and State

WEINMAN, NAT'L STEUBENVILLE  
EDWARD, Exchange OHIO  
1/12/41 B.K. B.L.S.

Date 1/14/41  
Optician  
Call No. J. Maloney  
Salesman

Name Firm Members, Managers, Etc.

REC'D JAN 21 1941

Upstairs <input checked="" type="checkbox"/>	Advertisements? <input checked="" type="checkbox"/> Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/> Pamphlets <input type="checkbox"/>	High <input checked="" type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>	Average <input type="checkbox"/>
		Cheap <input type="checkbox"/>

Percentage of Use of Univis

150 pts. R. Knapp & Co. 2 Rm.

Your estimate of number of pairs of Univis that would be a good monthly average for him. 7-8 Pk.

Principal Jobber White - Harris	Univis Jobber Kalamann	Attitude toward Univis Jobber O.K.
------------------------------------	---------------------------	---------------------------------------

Style of Univis Used D	Attitude toward Univis Good	Does He Make Effort to Use? No
---------------------------	--------------------------------	-----------------------------------

In his situation is his Univis record good, fair or poor?

Good

What is his principal difficulty?

Needs attention. Practice not large, as yet

Any Complaints?

No ☒Yes ☐

See Remarks

In Following up, emphasize:

Refer to him as Dr.  
The telephone is  
getting out. He has  
a patient he was  
attempting to fix.

I had sent him some more by  
mail in evening and had to spend  
the morning waiting for him  
and was late. He was trying  
to get more Univis. Had  
some more here.

REMARKS

(Use Other Side of Blank for Remarks)

969

568 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name Kramer, Exchange Realty Bldg. Street Address Steubenville, Ohio City and State

Date 1/14/41 Draft Optician Optom Rep. F. L. Call No. X Salesman J. Malone

Names Firm Members, Managers, Etc.

REC'D JAN 21 1941

Upstairs <input checked="" type="checkbox"/>	Advertisements? <u>Yes</u>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Good <input type="checkbox"/>

Percentage of Use of Unisvis

Kramer 80 Unisvis 17 Other 3

Your estimate of number of pairs of Unisvis that would be a good monthly average for him.

12-15

Principal Jobber	Unisvis Jobber <u>Bette McKee (?)</u>	Attitude toward Unisvis Jobber
------------------	---------------------------------------	--------------------------------

Styles of Unisvis Used <u>D</u>	Attitude toward Unisvis <u>Good</u>	Does He Make Effort to Use? <u>Yes</u>
---------------------------------	-------------------------------------	--

In his situation is his Unisvis record good, fair or poor?

Good

What is his principal difficulty?

None

Any Complaints?	Outlook for Future
No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	<u>Good. Am sending some</u>
See Remarks	<u>advertising material.</u>

In following up, emphasize:

Appreciation of Good Feature

REMARKS (Use Other Side of Blank for Remarks)

970

Dealer's Name

Street Address

City and State

Hawser, George A. 1/10/41  
TWC HUB DEPT STORE  
STEUBENVILLE, OHIO

Date

Optical

Rep.

Call No.

Salesman

1/10/41  
Optical  
Options  
Optom  
F. L.  
2  
Malone

Name Firm Members, Managers, Etc.

DEPT JAN 21 1947

Upstairs

☐

Advertisements

No

Rolls

☐

Character of

Downstairs

☐

Window Displays

☐

Paraphernalia

☐

High

Jewelry Store

☐

Newspapers

☐

Average

Dept

☒

Low

Percentage of Use of Mileage

Boys 93, Women 5, Other

Your estimate of number of pairs of glasses that would be a good monthly average for him

5-90

Principal Jobber

A.O.

Other Jobber

Reese

O.K.

Style of Glasses Used

D.B.

Style of Glasses Used

Small

Style of Glasses Used

Small

In his attention to his glasses record good, fair or poor?

Good

What is his principal difficulty?

Scrupulous price conscious.

Any Comments?

No

Yes

See Remarks

See Remarks

As Following up, Remarks:

Good

Good

# 570 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name

Street Address

City and State

Kramer,

714  
FERR

SOVIDUSKY

JULIUS

BLOD

C 1/19/40

11/5/40

Condit  
Optician  
Optom

Reg. ✓  
F. L.

Call No.  
2

Salesman  
Maloney

Names Firm Members, Managers, Etc.

Optician <input checked="" type="checkbox"/>	Advertisements? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Dispensaire <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of National

15 my pts 85 Union N. N. N.

Your estimate of number of pairs of Univis that would be a good monthly average for him. 6-7 Pm

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
	2	2

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
D	Good	Yes

In his attempts to use Univis, would you, Mr. or Mrs.?

What is his principal difficulty?

Short of any resistance to fine visitors

Do you have any other Univis?

No Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

Do you have any other Univis? Yes ☒ Not sure only Kramer

972

# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 571

Dealer's Name <b>Hedges, T. R.</b>	Street Address <b>115 WASHINGTON</b>	City and State <b>SANDUSKY, Ohio</b>
Date <b>12/5/50</b>	Optician Optician <input checked="" type="checkbox"/> Optician <input type="checkbox"/>	Call No. <b>2</b>
Salesman <b>McLurey</b>		

Names Firm Members, Managers, Etc.

Optician <input type="checkbox"/>	Advertisements? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Decorations <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Photobooks <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Type of Refractive

**15 myopia 50 Astigmatism 23 Hyperopia**

Your estimate of number of pairs of Unis that would be a good monthly average for him: **15 Pairs**

Principal Jobber <b>To R. W. King</b>	Unis Jobber <b>Optical</b>	Attitude toward Unis <b>Good</b>
--	-------------------------------	-------------------------------------

Style of Unis Used <b>B. P. King</b>	Attitude toward Unis <b>Good</b>	Does He Make Effort to Sell? <b>Yes</b>
---	-------------------------------------	--

In his attitude to his Unis record good, fair or poor? **Good**

What is his principal difficulty? **None**

Any Complaints? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	Outlook for Future <b>Good</b>
--	-----------------------------------

See Remarks

Following up, emphasize:

**Appreciation. Researching Trip and Sample**

REMARKS  
(Use Other Side of Blank for Remarks)

**973**



Dealer's Name **Criensoy** Street Address **158 E SANDUSKY**  
**A. R. 19140 Market**

**DEC 9 1940**

Date <b>12/5/40</b>	Quotations <input checked="" type="checkbox"/>	Rep. <input checked="" type="checkbox"/>	Call No. <b>2</b>	Signature <b>R. H. Halsey</b>
------------------------	---	---	----------------------	----------------------------------

Names Firm Members, Managers, Etc.




Upstairs <input checked="" type="checkbox"/>	Advertisements <input type="checkbox"/>	Radio <input type="checkbox"/>	Number of Persons <input type="checkbox"/>
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input type="checkbox"/>
			Other <input type="checkbox"/>

Percentage of Use of Rifampin

Percentage of Use of Rifles  
19 Sept. 9: Unknown 9 Nov.

Your estimate of number of pairs of Unis that would be a good monthly average for him. 8-5 02

Principal Jobber	Unitra Jobber	Attitude toward Unitra Jobber
	<i>U. S. of America</i>	<i>Good</i>

Style of Symbols Used	Attitude toward Unions	Does He Make Effort to Use?
 		

In his situation in his Uncle's record good, fair or poor? *Good*

What is his principal difficulty?

Women and Our Life, Oct 20, 1906

Any Complaints? ☒ No ☐ Yes ☐ *Flu. Am having it again!*  
 See Remarks *Yellow fever symptoms I made.*  
*She is well.*

In Following up, Enclosure: 0

Neurology & Psychiatry 24

(Use Other Side of Sheet for Remarks)

974

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 573

Dealer's Name Burgee Street Address 8 SLOAN BLVD City and State SENDUSKY, OHIO

Date 12/5/40 Rep. F. L. Call No. 2 DEC 9 1940

Optician ✓ Optom. ✓

Name Firm Members, Managers, Etc. J. Maloney

Upstairs ☒ Downstairs ☐ Jewelry Store ☐

Advertisements NO Window Displays ☐ Newspapers ☐

Radio ☐ Pamphlets ☐

Character of Practice: High ☐ Average ☒ Cheap ☐

Percentage of Use of Bifocals 15 mg pts

Your estimate of number of pairs of Univis that would be a good monthly average for him 92. Knuff & Son, Inc. 5-6 Pm.

Principal Jobber White-Ham Univis Jobber U.S. Optical Attitude toward Univis Jobber Good

Style of Univis Used B.D. Attitude toward Univis Good Does He Make Effort to Use? No

In his situation is his Univis record good, fair or poor? Poor

What is his principal difficulty? Oblige to White-H, who carried him when he needed it.

Any Complaints? No ☒ Yes ☐ See Remarks After how many Univis was sent him, says he will be a better job

Following up, Emphasize: General feature of our request to show Univis to all

REMARKS  
 (Use Other Side of Blank for Remarks) 975 priority for

574 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Business Name: *CANNON, E. M.* Street Address: *114 N. MAIN* City and State: *96 Marys, Ohio*

Date: *7/7/40* Contact: *J. Maloney* Rep. *J. L.* City: *96 Marys* State: *Ohio*

Name: *Maloney* Members: *Managers, Etc.*

REC'D NO. *1940*

Upstairs <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

*Kingston 96 Union St*  
Your estimate of number of pairs of Univis that would be a good monthly average for him: *4-6 Pcs.*

Principal Jobber <i>7</i>	Univis Jobber <i>Peerless</i>	Attitude toward Univis Jobber <i>Good</i>
---------------------------	-------------------------------	---

Style of Univis Used <i>B</i>	Attitude toward Univis <i>Good</i>	Does He Make Effort to Use? <i>No</i>
-------------------------------	------------------------------------	---------------------------------------

In his situation is his Univis record good, fair or poor? *Good*

What is the principal difficulty? *Price trouble*

Any Complaints? *No* ☒ Yes ☐ *Butter. Ordered Comparison. Has been presented. Univis*

In following up, suggestion: *Keep y showing to all in a way all can understand. 9/6*

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 575

Dealer's Name **WILHELM, J. E.** Street Address **507 CHILLICOTHE** City and State **PORTSMOUTH, OHIO.**

Date **1/29/44** Occlusal ☐ Optician ☒ Optom. ☒ Rep. ☒ P. L. ☒ Call No. ☒ Salesman **J. J. Delaney**

Names Firm Members, Managers, Etc.

REC'D FEB 3 1944

How does Univis enter into?

Opticians <input type="checkbox"/>	Advertisements? <b>NO</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input checked="" type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

**15 myopia 98, others**

Your estimate of number of pairs of Univis that would be a good monthly average for him.

**3-4 Pairs**

Principal Jobber <b>White - James</b>	Univis Jobber <b>Circle</b>	Attitude toward Univis Jobber <b>0.15</b>
---------------------------------------	-----------------------------	---

Style of Univis Used <b>D.</b>	Attitude toward Univis <b>OK</b>	Does He Make Effort to Use? <b>NO</b>
--------------------------------	----------------------------------	---------------------------------------

Is his attitude to his Univis good, fair or poor? **Poor**

What is his principal difficulty? **Price Price Price**

Any Complaints? **No** Outlook for Future **Good**

See Remarks **Had a moment with him young man, very lively, should use Univis. But the price situation is too low.**

See up. Emphasize **See up.**

feature **feature**

REMARKS (Other Side of Blank for Remarks)

**977**

# 576 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Name PITCHER, Carter Street Address 416 Fort Avenue City and State Cincinnati Ohio  
 Date 1-7-41 Occupation ☒ Optician ☐ Rep ☐ Call No. 5111 ☐ Salesman  
 Names of Members, Managers, Etc. L

REC'D FEB 3 1941

How did you hear of this? Trigpts 978 Edwards met thru  
 Your estimate of number of pairs of Unis that would be a good monthly average for him 3  
 Principal Jobber Auto-Mechanics Unis. Jobber Charles Attitude toward Unis Jobber OK  
 Styles of Unis Used D Attitude toward Unis Good Does He Make Effort to Use? Weak  
 In his situation is his Unis record good, fair or poor? Poor  
 What is his principal difficulty? Price, small practice  
 Any Complaints? ☒ No ☐ Yes ☐ Outlook for Future There is a possibility here.  
 See Remarks The necessity of showing to all  
 REMARKS (Use Other Side of Blank for Remarks) 978



UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 577

Dealer's Name **SCOTT, E. C.** Street Address **423 Piqua, N. Main** City and State **Ohio**  
 Date **11/16/40**

Date **11/16/40** Oculist ☒ Optician ☒ Rep. ☒ P. L. ☒ Call No. **2** Salesman **J. Maloney**  
 Names Firm Members, Managers, Etc.

REC'D NOV 28 1940

Upstairs <input type="checkbox"/>	Advertisements? <b>XO</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

**Knypts 98, other ✓**

Your estimate of number of pairs of Univis that would be a good monthly average for him **5-7 Pcs**

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

**Reulen**

**Good**

Style of Univis Used

Attitude toward Univis

Does He Make Effort to Use?

**B**

**0.15**

**No**

In his situation is his Univis record good, fair or poor?

**Poor**

What is his principal difficulty?

**Been using 16 1/4 Knypts. Didn't think he could get them. Says he will use 16 1/4 Univis. See comments on this de-**

In following up, emphasize:

**relaying.**

**See Remarks**

(Use Other Side of Blank for Remarks)

**979**

Ethel -  
 In this follow-up em-  
 phasizing that I was most  
 enthusiastic in my re-  
 port of the call since I  
 was very pleased in dis-  
 covering WHY Dr. Seatt  
 had not been using them,  
 namely, that he did not  
 know he could have them  
 surfaced down to a smaller  
 size if he so desired. Really  
 build this up about my  
 enthusiasm upon getting  
 this cleared up, and certain-  
 ly we are that I saw he can  
 use the seg. he has always  
 wanted to use, etc.

Maybe this approach will  
 register.

Dealer's Name		Street Address		City and State	
Tate, E L		27 N FOURTH		NEWARK, OHIO	
Date 2/5/41	Optician Optician Optician	Rep. P. L.	Call No.	Salesman Maloney	
Names Firm, Members, Managers, Etc.					
1941					
Has Univis sales aids?					
Upstairs <input type="checkbox"/>	Advertisements? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice		
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>		
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>		
			Cheap <input type="checkbox"/>		
Percentage of Use of Materials					
Knights 90, Union 4, Prof 3, etc.					
Your estimate of number of pairs of Univis that would be a good monthly average for him. 6-8 Pairs					
Principal Jobber		Univis Jobber		Attitude toward Univis Jobber	
Wholesale					
Style of Univis Used		Attitude toward Univis		Does He Make Effort to Use?	
D. B.		Good		Weak	
In his situation is his Univis record good, fair or poor? Poor					
What is his principal difficulty?					
Need too large number of men converted					
Any Complaints?					
No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> Only few men interested him				
See Remarks: a business and price list					
In following up, emphasize that Univis is not in Newark, in Union, O.					
General					
981					

# 580 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name <b>Sturmen,</b> <b>W. B.</b> <b>711/41</b>	Street Address <b>83</b> <b>CHURCH</b> <b>ST.</b>	City and State <b>NEWARK,</b> <b>Ohio</b>
Date <b>2/5/41</b>	Optician Optician <input checked="" type="checkbox"/> Optom <input type="checkbox"/>	Rep. <input checked="" type="checkbox"/> F. L.
Call No. <b>2</b>	Salesman <b>Maloney</b>	

Name of Firm Members, Managers, Etc.

How does Univis sales aid?

Upstairs <input type="checkbox"/>	Advertisements? <input checked="" type="checkbox"/> <b>No</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Chap <input type="checkbox"/>

Percentage of Use of Bifocals

**scripts 97, others 3**

Your estimate of number of pairs of Univis that would be a good monthly average for him **2-3 Pcs**

Principal Jobber <b>White Haines</b>	Univis Jobber <b>unless</b>	Attitude toward Univis Jobber <b>out</b>
---	--------------------------------	---

Style of Univis Used <b>B</b>	Attitude toward Univis <b>Good</b>	Does He Make Effort to Sell? <b>No</b>
----------------------------------	---------------------------------------	---

In his situation is his Univis record good, fair -- poor? **Poor**

What is his principal difficulty?

**Yes; still not sufficiently sold on it**

Any Complaints?	Outlook for Future
No <input type="checkbox"/> Yes <input type="checkbox"/>	<b>What are various points</b>
See Remarks <b>Wells here. Good from</b>	

Following up, Emphasize **that our products are**

**Testimonials from people who have**  
**W. B. Sturmen**  
**from doctors that prescribe Univis (much better than you, etc.)**

Dealer's Name <b>JOHNSON, E. L.</b>		Street Address <b>2414 N. Park Ave</b>		City and State <b>Newark, Ohio</b>	
Date <b>2/5/41</b>	Optician <input checked="" type="checkbox"/> Optician <input checked="" type="checkbox"/> Optician	Rep. <input checked="" type="checkbox"/> P. L.	Call No. <b>1</b>	Salesman <b>McLoney</b>	
Names Firm Members, Managers, Etc.					

Has what Univis sales aids?

Upstairs <input checked="" type="checkbox"/>	Advertisements? <b>NO</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Refractive

**Knight's 96, Union 3 other**  
 Your estimate of number of pairs of Univis that would be a good monthly average for him **2-3 Pairs**

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

**Nicholson**

**OK**

Style of Univis Used

Attitude toward Univis

Does He Make Effort to Use?

**D.**

**Good**

**I don't think so**

In his situation is his Univis raised good, fair or poor?

**Poor -**

What is the principal difficulty?

**Low prices**

Any Complaints?

No ☒ Yes ☐

Outlook for Future

See Remarks

**I have doubts about the future here**

Following up, Emphatic:

**Several Features**

REMARKS

(The Other Side of Blank for Remarks)

**983**



582 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name **HAYNES,** Street Address **12 E. POPE PLACE** City and State **Newark, Ohio.**  
**W.I.**

Date **2/5/41** Optician ☒ Ref. ☒ Call No. **1** Name **Maloney**  
 Optician ☒ F. L. ☐

Name Firm Members, Managers, Etc.

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How many Univis sales aids? **None (ordered)**

Upstairs <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radios <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input checked="" type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Refracts

**Knights 98 others**

Your estimate of number of pairs of Univis that would be a good monthly average for him.

**2-3 Pm.**

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
<b>Peerless</b>	<b>Peerless</b>	<b>OK</b>

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Sell?
<b>D</b>	<b>Good</b>	<b>no.</b>

In his opinion as to his Univis record good, fair or poor?

**Good**

What is his principal difficulty?

**Lowest income clientele, hard January**

Any Complaints?

No ☐

Yes ☐

See Remarks

Outlook for Future

Is Following up, necessary?

**Yes it is.**

**Use 7 News**  
**for all**  
**purposes.**

(Use Other Side of Book for Remarks)

**984**

# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 583

Client's Name

Street Address

City & State

00014  
THE  
CROWN ARCADE  
NEWARK  
NJ

Date

Occupation

Reg.

Call No.

Salutation

4/5/41

Optician

F.L.

1

Maloney

Name Firm, Members, Managers, Etc.

FILE

How would you like your Univis?

Upstairs <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

Knight 96 Others 4

Your estimate of number of pairs of Univis that would be a good yearly average for him

3-6 Pairs

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
W. Haene	Geerless	-
	Delella	

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
	Good	No

In his attention to his Univis record good, fair or poor?

Poor

What is his principal difficulty?

Price Price

Any Complaints?

No ☒

Yes ☐

See Remarks

Only few minutes but he takes the two best from the two in Newark.

In Following up, Emphasize

General Features and Please

Line 985 985 985

Dealer's Name	Street Address	City and State
Owen, Geo. F.	117 S. Main	MT. Vernon OHIO.

Date	Optician	Reg. P. L.	Call No.	Signature
1/9/41	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	2	J. Holmberg

Names Firm Members, Managers, Etc.

JAN 14 1941

Upstairs <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input checked="" type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input type="checkbox"/>
			Cheap <input checked="" type="checkbox"/>

Percentage of Use of Bifocals

Kneifes 98, Others 2

Your estimate of number of pairs of Univis that would be a good monthly average for him

1-2 Pairs

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
	Perkins (?)	

Styles of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
B	0.5	No

Is his situation in his Univis record good, fair or poor?

Poor

What is his principal difficulty?

Afraid of mine; Cheap chemicals

Any Complaints? No ☒ Yes ☐ Should not be on list, but will give one more chance.

See Remarks

In Following up, emphasize:

This obligation to show the lens!

Put it on 986

REMARKS  
(Use Other Side of Blank for Remarks)

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 585

Dealer's Name *Jurgensen, C.E.* Street Address *3<sup>rd</sup> S. Main* City and State *Middletown, Ohio*

REC'D NOV 28 1940

Date *11/16/40* ✓ Occlusist \_\_\_\_\_ Rep. *F.L.* ✓ Call No. *2* Salesman *J. Maloney*

Names Firm Members, Managers, Etc.  
*C.E. Jurgensen, O.D. (Father)*  
*Mary Jurgensen, O.D. (Daughter)*  
*(Sister & Daughter, Father, Mother)*

Upstairs <input type="checkbox"/>	Advertises? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

*Knight 96 Union 3 1/2 hr*

Your estimate of number of pairs of Univis that would be needed monthly average for him *8 Pairs*

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
	<i>?</i>	<i>?</i>

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
<i>D</i>	<i>O.K.</i>	<i>No</i>

In his situation is his Univis record good, fair or poor? *Good*

What is his principal difficulty? *"Knight seems to be satisfactory - Father*

Any Complaints? *in wearing contact lenses*  
No ☒ Yes ☐ *I don't see any difference!*

In following up, emphasize: *that from any test you will*

(Use Other Side of Card for Remarks)  
*987*

to make China - superior;  
 that patient are not to be afraid  
 of glass on the doctor himself, as  
 he would probably wear  
~~the~~ cement caps; that  
 is all that is necessary.  
 is something "good enough  
 to get by with." Why spend  
 so much time in school,  
 so much money for new  
 instruments, so much post  
 graduate study? The answer  
 is, that to be consistent, the  
 best, the most nearly perfect  
 should be sought in lens  
 as in other departments.



Dealer's Name

Street Address

City and State

BRAKEMAN,  
HARRYMIDDLETOWN,  
OHIO.

11/21/40

Date 11/26/40	Condition Optician Optician	Rep. P. L.	Call No. 2	Signature J. J. Maloney
Name Firm Members, Unions, Etc.				

REC NOV 28 1940

Upstairs <input type="checkbox"/>	Advertiser <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	High <input type="checkbox"/>
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	Average <input checked="" type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Cheap <input type="checkbox"/>

Percentage of Use of Unions

Kraft 85, Union 15, other 0

Your estimate of number of pairs of Unions that would be a good average for him

5-8 Pairs

Principal Jobber	Unions Jobber	Other Jobber
	?	?

Style of Unions Used D	Attitude toward Unions Good	Any Unions in Use? Yes
---------------------------	--------------------------------	---------------------------

In his attitude to his Unions  
reputed good, fair or poor?

Fair

What is his principal difficulty?

Don't spend enough time demonstrating

Any Complaints No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	Remarks Fair (Only few pairs) Good work
--	------------------------------	---

Is Payment up, Satisfaction?

Quality

One other pair of Unions in use

989

# 588 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name <b>DENNIS, W. O.</b>		Street Address <b>Palace Marion, Theater OHIO Bldg</b>		City and State
Date <b>2/7/41</b>	Optician Optician Optician	Rep. <input checked="" type="checkbox"/> P. L.	Call No. <b>2</b>	Signature <b>Maloney</b>

Names Firm Members, Managers, Etc.

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Upstairs <input checked="" type="checkbox"/>	Advertisements? <b>yes</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

**King & 90 Union 9 Other**

Your estimate of number of pairs of Unis that would be a good monthly average for him **7-8 Pairs**

Principal Jobber <b>James</b>	Univis Jobber <b>Central Optical</b>	Attitude toward Univis Jobber <b>Good</b>
----------------------------------	---	--

Style of Unis Used <b>D. 15</b>	Attitude toward Unis <b>Good</b>	Does He Make Effort to Use <b>Somewhat</b>
------------------------------------	-------------------------------------	---

In his situation is his Unis good, fair or poor? **Fair**

Does he have principal difficulty? **Yes, weak vision**

Any Complaints? <input checked="" type="checkbox"/>	Outlook for Future <b>Fair. Vision, been bettering him, I suggest</b>
---	--

See Remarks

Emphasize **General**  
**Refractive**

Use Other Side of Blank for Remarks

**990**

Dealer's Name **OYSTER,** Street Address **510 Marietta,** City and State **Peoples Ohio.**  
**Harold W. Bank**  
**2441**  
**8439**

Date **1/31/41** Optician ☒ Rep. ☒ Call No. **1** Salesman **Moloney**  
 Optician ☒ P. L. ☒

Name Firm Members, Managers, Etc.

REC'D FEB 3 1941

How what Univis sales aids?

Upside ☒ Advertisers **No** Radio ☐ Character of Practice  
 Downside ☐ Window Displays ☐ Pamphlets ☐ High ☐  
 Jewelry Store ☐ Newspapers ☐ Average ☒  
 Cheap ☐

Percentage of Use of Bifocals

**Bryants** **96** **Univis** **Bottom**

Your estimate of number of pairs of Univis that would be a good monthly average for him

**6-8 Pm**

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

Style of Univis Used

Attitude toward Univis

Does He Make Effort to Use?

**D.C.****Good****Not sufficient**

In his situation is his Univis record good, fair or poor?

**Poor**

What is his principal difficulty?

**Only been getting the B.**

Any complaints?

Outlook for Future

No ☒Yes ☐

See Remarks

**Better** **I look for a**  
**good and to develop**  
**less ordered complaints**

Following up, Emphasize

**Harold Feasible**

REMARKS

(Use Other Side of Blank for Remarks)

**See 9 D****991**

# 590 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name **MATTOCK,** Street Address **Marietta,** City and State **Ohio**  
**T. R.** **541**

Date **1/31/41** Optician **Matoney** Reg. **1** Call No. **Matoney**  
 Optician **Matoney** P. L.

Name First Name, Manager, etc.

**Mattock is in Dr. W. W. Sauer's**  
**office. Dr. Sauer is in T. R. L. with**  
**heart disease. Do not**  
**know whether or not he**  
**plans to return to Marietta.**

How many Univis sales aids? **1**  
 Upstairs ☐ Advertisers? ☐ Radio ☐ Character of Practice ☐  
 Eyeglasses ☒ Window Displays ☐ Pamphlets ☐ High ☐  
 Jewelry Store ☐ Newspapers ☐ Average ☐  
 Cheap ☐

Percentage of Use of Univis

**Knights 45, Others 5**

Your estimate of number of pairs of Univis that would be a good monthly average for him **3-5 Pairs**

Principal Jobber **W. H. Harris** Univis Jobber **Peckham** Attitude toward Univis **OK**

Opinion of Univis **Just business** Attitude toward Univis **Good** Does He Make Effort to Use?

If his mounting is his Univis record good, fair or poor?

What is his principal difficulty?

Any Complaints? **No** ☐ **Yes** ☐ Outlook for Future **Not sure with him**  
 See Remarks **He is not very serious about**  
 In Following up, Emphasize: **Money saving**

REMARKS (Use Other Side of Blank for Remarks)

**992**

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 591

Sender's Name HUTCHINSON, J. B. Street Address East Marietta, Natl Bldg. City and State Ohio

Date 1/31/41 Outlet Optician Rep. F. L. Card No. Maloney Salesman  
Name, Firm, Members, Managers, Etc.

REC'D FEB 3 1941

How many Unites does he?

Unites <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input type="checkbox"/>
			Cheap <input checked="" type="checkbox"/>

Percentage of Use of Unites

Receipt 98: Uniting

Your estimate of number of pairs of Unites that would be a good monthly average for him

3-4 Pairs

Personal Judgment <u>White Hair</u>	Optician's Judgment <u>Green</u>	Attitude toward Unites <u>OK</u>
-------------------------------------	----------------------------------	----------------------------------

Style of Unites Used <u>B</u>	Attitude toward Unites <u>Good</u>	Does He Make Effort to Sell? <u>No</u>
-------------------------------	------------------------------------	--

In his attention to his Unites record good, fair or poor?

Good

What is his principal difficulty?

Price

Any Complaints?

No ☒ Yes ☐

See Remarks

Fair. May be some development here.

Is he working up, improving?

Improving

REMARKS (Use Other Side of Blank for Remarks)

993



# 592 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name **BERNHARDT, H.E.** Street Address **605 WASHINGTON ST** City and State **Marietta, Ohio.**

Date **1/31/41** Outlet ☒ Optician ☒ Rep. ☒ F. L. Call No. **1** Salesman **J. McLaughlin**

Names Firm Members, Managers, Etc.

REC'D FEB 3 1941

Does your Univis sales aide?

Upstairs <input type="checkbox"/>	Advertises? <b>No</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input checked="" type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

**Keyfits 98, Union 3**  
Your estimate of number of pairs of Univis that would be a good monthly average for him **2-3 Pz.**

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
	<b>P. J. Reese</b>	<b>O.K.</b>

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
<b>D</b>	<b>Good</b>	<b>Fair</b>

In his situation is his Univis record good, fair or poor? **Poor - fair**

What is his principal difficulty?

**Small practice, poor clientele**

Any Co. Agents? **No** Yes ☐ Outlook for Future

Remarks **Fair. Practicing in his home. Possibilities are not large.**

**Univis Feature**

REMARKS

(Use other side of Blank for Remarks)

994

# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 593.

Dealer's Name

Street Address

City and State

Turner,  
A

59 1/2 N  
Main

Mansfield,  
Ohio

Date 2/6/41	Oculist Optician Optom <input checked="" type="checkbox"/>	Rep. <input checked="" type="checkbox"/> P. L.	Call No. <input checked="" type="checkbox"/>	Salesman Maloney
----------------	--	---	--	---------------------

Name-Firm Members, Managers, Etc.

Has Univis sales aids?

Upstairs <input checked="" type="checkbox"/>	Advertises? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

89%

Your estimate of number of pairs of Univis that would be a good monthly average for him.

3-4 Pairs

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

A. O.

Reese Optical Co.

OK

Style of Univis Used.

Attitude toward Univis

Does He Make Effort to Use?

D

Good

No

In his situation is his Univis record good, fair or poor?

P. O. ✓

What is his principal difficulty?

Price, small practice.

Any Complaints?

No ☒

Yes ☐

Outlook for Future

See Remarks: Our growing line of 6 mm. trial period. It is mutually

Following up. Remarks:

agreed that if a trial period of 14 days not become 'active' he should be removed.

Signature

(Use Other Side of Blank for Remarks)

995

# 594 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name **TOOTIKIAN, Aram** Street Address **46 1/2 Main** City and State **Mansfield, Ohio**

Date **2/6/41** Occlusion ☒ Optician ☒ Optom. ☒ Rep. ☒ F. L. ☒ Call No. **-** Name **Maloney**

Name Firm Machine, Camera, Etc.

Jan 1941

Has what Univis sales aids?

Upstairs <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Rails <input type="checkbox"/>	Quantity of Frames <input type="checkbox"/>
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input checked="" type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Materials

**Knight 90 Union 8**  
Your estimate of number of pairs of Univis that would be a good monthly average for him **5-8 Pairs**

Principal Jobber <b>Reese Optical</b>	Univis Jobber <b>Univis</b>	Approximate amount of Univis stock <b>Univis</b>
Name of Univis Used <b>D03</b>	Approximate amount of Univis stock <b>Univis</b>	How do you like Univis? <b>Yes</b>

In his opinion is his Univis record good, fair or poor?

**Fair**

What is his principal difficulty?

**Building a life time client**

Any other comments?

**Univis**

Is Univis in your business?

**Univis**

Is Univis in your business?

**Univis**

Is Univis in your business?

**Univis**

Dealer's Name

Street Address

City and State

ENGWILLER, 98 Mansfield,  
N. Main Ohio.  
Ans. 1/1/41

Date 2/6/41	Condition Optical Optical	Rep. <input checked="" type="checkbox"/> P. L.	Call No. 1	Signature J. Maloney
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Name Firm Branch, Manager, Etc.

10 1941

How does Univis sales arise?

Upstairs <input type="checkbox"/>	Advertisements? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input checked="" type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Office

Kruger 97 Union 3

Your estimate of number of pairs of Univis that would be a good monthly average for him.

10-15 Pairs

Principal Jobber Keece Optical Co.	Univis Jobber Keece Optical Co.	Attitude toward Univis Good
---------------------------------------	------------------------------------	--------------------------------

Style of Univis Used D.B.	Attitude toward Univis Good	Does He Make Effort to Sell No.
------------------------------	--------------------------------	------------------------------------

In his attention to his Univis record good, fair or poor?

Good

What is his principal difficulty?

Wore a pair of B. - didn't like But is going

Any Complaints?

No ☒

Yes ☐

to get a pair of Univis. Only few minutes

is following up. Remarks: Write her.

See Record 997

Allen .V. H.

Dr. Anna Arnold, the  
reading of D. in tower - going  
to order a new dinner straight  
top Tropical Door.

She is wearing a Balcon  
1/4 in high - say 2  
feet. I don't know

I suggested that she place  
the reading say of her tripod  
16 in high, this making a total  
height of 25 in for the tripod.

Her head carriage is  
natural and she is not plump.  
At least naturally so.

In the fallow - if I  
suggest that a reference  
be made to the tropical 2,  
if you agree with the above  
dimensions, mention be made  
of them.

Copy of letter to Reese

998



Dealer's Name **BUTTERFIELD, FARMERS MANSFIELD, A.C.** Street Address **BK. BLOS.** City and State **OHIO**

Date **2/16/41** Optician **Maloney** Rep. **P.L.** Call No. **2** Salesman **Maloney**

Names Firm Members, Managers, Etc.

RECEIVED FEB 16 1941

Has what Univis sales aids? **None**

Upstairs <input checked="" type="checkbox"/>	Advertisements? <b>No</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

## Percentage of Use of Materials

**15 myles 50, 60, 80, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410, 420, 430, 440, 450, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570, 580, 590, 600, 610, 620, 630, 640, 650, 660, 670, 680, 690, 700, 710, 720, 730, 740, 750, 760, 770, 780, 790, 800, 810, 820, 830, 840, 850, 860, 870, 880, 890, 900, 910, 920, 930, 940, 950, 960, 970, 980, 990, 1000**

Your estimate of number of pairs of Univis that would be a good monthly average for him **7-800**

Principal Jobber <b>Reese</b>	Univis Jobber <b>Optical</b>	Attitude toward Univis <b>Good</b>
Buyer of Univis Used <b>B. D.</b>	Attitude toward Univis <b>Good</b>	Does He Make Effort to Sell? <b>Yes, but</b>
In his attention to his Univis record good, fair or poor? <b>Fair</b>		

What is his principal difficulty?

**Practice not large**

Any Complaints? **No** **Butter, since I explained he can make Univis lens**

In following up, **Univis can be made by using small**

note lens **999**

Visible by **999**



Dealer's Name: **STEENROD, C E**  
 Street Address: **204 FAIRFIELD Bldg.**  
 City and State: **LANCASTER, OHIO.**

Date <b>7/2/41</b>	Condition Optician Expert	Rep. P. L.	Call No. <b>2</b>	Name <b>McLoney</b>
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Name Firm Members, Lancaster, Pa.

RECEIVED JUL 1941

Has your Univer lens sold? **are not**

Upstairs <input checked="" type="checkbox"/>	Admission <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Wholesale Dispensary <input type="checkbox"/>	Pharmacy <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Wine & Liquor <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Other <input type="checkbox"/>

Percentage of lens at service

**13 mg ft. 90, Univer, etc.**

Very estimate of value of lens at service and would be a good quality contact for lens **7-8 Pm.**

Principal Address	Other Address	Other Address
<b>Post Office</b>		<b>all</b>

Style of Contact Lens	Amount of Contact Lens	How to Wear Lens in Eye
<b>D. B.</b>	<b>and</b>	<b>Impression</b>

Is the wearing of the lens in the eye painful and, if so, in what way? **Can't see**

What is the principal difficulty? **Opinion!**

Any Comments?

**no** **But the lens is not in the eye**

Is following up, necessary?

**General**

**feature,**

**but avoid any suggestion - 7007**

# 600 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL

Dealer's Name <b>PITCOCK, MILES L. 1/10/41</b>		Street Address <b>124 1/2 LANCASTER W. MAINE OHIO</b>		City and State
Date <b>2/4/41</b>	Optician <input checked="" type="checkbox"/> Optician	Rep. <input checked="" type="checkbox"/> P. L.	Call No. <b>2</b>	Signature <b>J. Maloney</b>

Names Firm Members, Members, Etc.

REPT FEB 10 1941

How does Univis sales aids?

Upstairs <input checked="" type="checkbox"/>	Advertisements? <b>20</b>	Radio <input type="checkbox"/>	Quantity of Products
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input checked="" type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Amount <input checked="" type="checkbox"/>
			Other <input type="checkbox"/>

Percentage of Use of Materials

**15 upst 92, Univis 7, Other 1**

Your estimate of number of pairs of Univis that would be a good monthly average for him **8-10 Pcs.**

Principal Jobber	Univis Jobber <b>Peckless</b>	Univis Sales <b>G.H.</b>
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Style of Univis Used <b>D B</b>	Attitude toward Univis <b>Good</b>	How He Sales Univis to Him? <b>Insignificant</b>
------------------------------------	---------------------------------------	---

In his situation is his Univis record good, fair or poor? **Poor - fair**

What is his principal difficulty?

He's keep remembering that he had two cases  
Any Complaints? **that came in and was not correct**  
No ☐ Yes ☐ Univis - only 8 type 150 pair  
See Remarks **he has fitted 1 pair of Univis**

Following up. Emphasize the percentages here.

**Refer to Univis**  
**1002**  
REMARKS  
As a practical business man for business as the result  
the number of new patients that go to Univis

# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 601

Dealer's Name

Street Address

City and State

Magnuson, Martins Lancaster,  
Paul L. Blog Ohio  
7/10/41

Date 7/3/41	Order Optical Order	Rep. F. L.	Call No. ✓	Salesman J. Holoney
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Name Firm Members, Managers, Etc.

ALLIED 10 1941

Uptairs <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Rails <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Chap <input type="checkbox"/>

Percentage of Use of Unisolv

1 Emph 88, Unisolv 5, Comp 5, other

Your estimate of number of pairs of Unisolv that would be a good quantity average for him.

5-6

Principal Author White Hairs	Check Author Michaelson	Amount of Order 0.15
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Style of Unisolv Used D	Attitude toward Unisolv Good	Does He Make Mistake in Cost? Weekly
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In his attention to his Unisolv record good, fair or poor?

Poor - fair

What is his principal difficulty?

Very close to W-H; Won't be led into it.

Any Complaints?

No ☒

Yes ☐

See Remarks

Fair. Michaelson has improved in work.

Following up, Remarks:

Several features  
Call attention to  
D. Michaelson



602 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

CROOM, KERN LANCASTER,  
W.D. 1.14 BLOD OHIO

1/14/41 2 Maloney

10 100

How did you find him?

Spoken	Written	Seen	Heard	Other
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Percentage of the of interest

100% 92, Wilson 7, other

How did you find him? 3-4-41

Spoken	Written	Seen
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Spoken	Written	Seen
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

How did you find him? 100

How did you find him?

How did you find him? Consideration, no other  
any other... 1004

**BLUM, Equitable Lenses**  
**PAUL, LOAN**  
**S. 8/12/11 BLOI**  
**Ohio**

2/4/41

Update	Admission	Rate	Other
Deviation	Widow's Pensions	Paraphrase	Other
Jewelry Store	Donations		

1000

**Hought 98, Unionville**

2-3

Private John	Private John	Private John
W-H	Reuben	O.K.

Private John	Private John	Private John
D	O.K.	No.

1006

# 604 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name

Street Address

City and State

Biddle, 201 Lancaster,  
B. H. Kresge Ohio  
7/10/41 Bldg.

Date 7/10/41	Outlet Optician Optom.	Rep. F. L.	Call No. 2	Signature J. Maloney
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Names Firm Members, Managers, Etc.

1941

Upstairs <input checked="" type="checkbox"/>	Advertisements?	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

Knight 92. Union 7 other

Your estimate of number of pairs of Univis that would be a good monthly average for him 5-700

Principal Jobber 2	Univis Jobber Peerless	Attitude toward Univis Good
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Style of Univis Used D Cat. 1	Attitude toward Univis Good	Does He Make Effort to Use? In his way, yes
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In his situation is his Univis record good, fair or poor? Fair - Poor

What is his principal difficulty? Vision, I feel.

Any Complaints?	Outlook for Future
No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	Only few months, recent interest
See Remarks	

Following up, Emphasis, Good at Nature.

REMARKS  
(Use Other Side of Blank for Remarks)

1006

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 605

Dealer's Name <b>STANLEY, C.V.</b>	Street Address <b>110 5 Third St.</b>	City and State <b>INDEPENDENCE Ohio</b>
Date <b>1/28/41</b>	Optician Optician Optician	Rep. Call No. F.L. <b>2</b>
Salesman <b>J. Maloney</b>		
Name Firm Members, Managers, Etc.		

REC'D FEB 3 1941

Has your Univis sales aids?

Upstairs <input type="checkbox"/>	Advertisements? <b>no</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

**15 my pts 98, Univer ✓**

Your estimate of number of pairs of Univis that would be a good monthly average for him **5-6 P.**

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
	<b>Peerless</b>	<b>O.K.</b>

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
<b>D.B.</b>	<b>Good in his way,</b>	<b>yes</b>

In his situation is his Univis record good, fair or poor? **Good**

What is his principal difficulty? **Price handles**

Any Complaints?	Outlook for Future
No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	<b>Inclined about method</b>
See Remarks	<b>overcoming price</b>

Is Following up, Emphasize

**Answer to Problem for 1/2 hr. and Univis situation**

REMARKS

1007





# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 607

Dealer's Name <b>MILLER, ROBERT</b>		Street Address <b>FREMONT,</b>		City and State <b>O</b>
Date <b>12/4/40</b>	Condition Optician <input checked="" type="checkbox"/> Optician <input type="checkbox"/> Optician <input type="checkbox"/>	Rep. <b>F. L.</b>	Call No. <b>2</b>	Name <b>J. Maloney</b>
Name First, Middle, Last, Etc. <b>0</b>				
DATE DEC 5 1940				
Upstairs <input checked="" type="checkbox"/>	Admission? <b>no</b>	Radio <input type="checkbox"/>	Character of Practice	
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>	
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>	
			Chap <input type="checkbox"/>	
C. Percentage of Sale of Spectacles <b>15 up to 75 Union I. R. &amp; 5-7 Per</b>				
Potential Jobber <b>G.O.</b>	Value Jobber <b>Dexter -</b>	Attitude toward Univis Jobber <b>Good</b>		
Style of Unis Lens <b>B</b>	Attitude toward Unis <b>Good</b>	Does He Make	Part to Use?	
In his attitude to the Univis record good, fair or poor? <b>C.</b>				
Write his principal difficulty? <b>Price trouble</b>				
Any Complaint? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Remarks <b>Univis Jobber</b>				
In following up, the dealer <b>Use 7 Union I. for all general</b>				
The Other Side of the Sheet <b>1009</b>				

# 608 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name Carter, Street Address Fremont, City and State O.  
JOHN  
J 1/1/40

Date 12/1/40 ☒ Oculist ☒ Rep. J. Moloney Call No. 2  
 Optician ☒ Optom. ☒ F. L. ☒

Names Firm Members, Managers, Etc.

DATE DEC 5 1940

Upstairs <input type="checkbox"/>	Advertisements? <u>X</u>	Radio <input type="checkbox"/>	Quantity of <u>Prescriptions</u>
Downstairs <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Good <input type="checkbox"/>

Percentage of Use of Reports  
Knight 92, Union 7, Other 1

Your estimate of number of pairs of Univis that would be a good monthly average for him. 5-7 Pairs

Principal Jobber <u>U.S. Optical Co.</u>	Univis Jobber <u>U.S. Optical Co.</u>	Address <u>U.S. Optical Co.</u>
--	---------------------------------------	---------------------------------

Status of Univis Used <u>D B</u>	Attitude toward Univis <u>Good</u>	How do you like Univis? <u>Very Satisfied</u>
----------------------------------	------------------------------------	---

In his situation is his Univis record good, fair or poor? Good - Fair

What is the principal difficulty? Doesn't make sufficient effort

Any Complaints? No ☒ Yes ☐ Other Complaints Univis is not as good as advertised

Is following up, suggested? Yes ☒ No ☐ Univis is not as good as advertised

That the Univis is not as good as advertised  
giving Univis full credit

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 609

Dealer's Name

Street Address

City and State

BANISTER, 119 Fremont  
E. B. 5 Front C  
A. B. 85

Optician Optician Optician	Rep. F. L.	Call No. 2	Salesman Maloney
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Names Firm Members, Managers, Etc.

1945

Upstairs <input checked="" type="checkbox"/>	Advertisements <input type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Champ <input type="checkbox"/>

Percentage of Use of Univis

Univis 85, Univis 10, Other 5

Your estimate of number of pairs of Univis that would be a good monthly average for him. 6-8 Pairs

Principal Jobber Cheyand	Univis Jobber Hubbard-Lake	Attitude toward Univis Jobber Good
Style of Univis Used D, R	Attitude toward Univis Good	Does He Make Point to Univis? Yes

In his attitude to his Univis record good, fair or poor?

Fair

What is his principal difficulty?

Very small practice; unpleasant

Any Complaints?

No ☒

Yes ☐

See Remarks

In following up, emphasize

Protection

YEHLEY, Delaware,  
WALTER, Ohio.

Date 2/7/41	Place Delaware	Age 22	Sex M	Signature Maloney
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MAILED 10 1941

How would United States aid?

Operator <input type="checkbox"/>	Advocate <input checked="" type="checkbox"/>	Public <input type="checkbox"/>	Operator of <input type="checkbox"/>
Domestic <input type="checkbox"/>	Foreign <input checked="" type="checkbox"/>	Foreign <input type="checkbox"/>	Ship <input type="checkbox"/>
Journal <input checked="" type="checkbox"/>	Foreign <input type="checkbox"/>		Aviation <input checked="" type="checkbox"/>
			Other <input type="checkbox"/>

Receipts to Receipts 10.  
Total 3

White House 922	Charles	OK
State of United States B	Attitude toward United States OK	Does He Make Effort to Use? No

Is the situation in the United States good, fair or poor? Poor

What is the principal difficulty?

One of the original Receipts says  
No. 1. I am not sure, but  
No. 2. I am not sure, but  
No. 3. I am not sure, but

appears to be  
1012

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 611

Dealer's Name

Street Address

City and State

C. Grimm,  
CHAS  
W. 11/11

12 1/2 W. DELAWARE,  
Sondes Ohio

Date 1/1/41	Optician Optician Optician	Rep. P. L.	Call No. 1	Signature Maloney
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Name Firm Members, Managers, Etc.

J. 1941

How does Univis sales aid?

Upstairs <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

Kayfles 75, Other 25  
Your estimate of number of pairs of Univis that would be a good daily average for him. 2-3 P.

Principal Jobber White Lens 97%	Univis Jobber Peelers	Attitude toward Univis Jobber OK
------------------------------------	--------------------------	-------------------------------------

Style of Univis Used D. S.	Attitude toward Univis Good	Does He Make Effort to Use? No
-------------------------------	--------------------------------	-----------------------------------

In his situation is his Univis record good, fair or poor?

Good

What is his principal difficulty?

Bound to trade with W-Ham

Any Complaints?

No ☒

Yes ☐

Fair

Outlook for Future

See Remarks

Following up. Emphasis:

General Features

REMARKS

(Use Other Side of Blank for Remarks)



# 612 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name	Street Address	City and State
BROOKAW, C.W.	25 N. SANDUSKY	DELAWARE, OHIO.

Date	Optician Optician Optician	Rep. P. L.	Call No.	Salesman
2/7/41			1	Maloney

Names Firm Members, Managers, Etc.

Has your Univis sales aids?

Upstairs <input type="checkbox"/>	Advertises <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input checked="" type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

Kerrys 90, Webster 3, Union 5, etc.

Your estimate of number of pairs of Univis that could be a good monthly average for him. 3 Pm

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
G.O.	Optical	Good

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
D.B.	Good	Weak

In his situation is his Univis record good, fair or poor? Poor.

What is his principal difficulty? Price, small practice

Any Complaints? No ☒ Yes ☐ Outlook for Future Considerable time going over all features. He may surprise us.

Following up Emphasize: Protection

REMARKS  
(Use Other Side of Blank for Remarks) 1014

Dealer's Name <b>Reed Optical Co.</b>		Street Address <b>36 N. Ludlow St.</b>		City and State <b>DARTON, Ohio</b>	
Date <b>6/14/40</b>	Oralist <input checked="" type="checkbox"/>	Rep. <input checked="" type="checkbox"/>	Call No. <b>1</b>	Business <b>JUN 18 1940</b>	
Names Firm Members, Managers, Etc. <b>Reed, Sr. O. W. L.</b> <b>Reed, Jr. O. W. L.</b>					
Upstairs <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice High <input type="checkbox"/>		
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	Average <input checked="" type="checkbox"/>		
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Cheap <input type="checkbox"/>		
Percentage Use of Bifocals <b>Krypts 95, Union 3, Other 2</b>					
Your estimate of number of pairs of Univis that would be a good monthly average for him. <b>5-9 P.</b>					
Principal Jobber <b>Valley Optical Co.</b>		Univis Jobber <b>Valley Optical Co.</b>		Attitude toward Univis Jobber <b>Good</b>	
Style of Univis Used <b>B - D.</b>	Attitude toward Univis <b>Good</b>		Does He Make Effort to Use <b>Not sufficient</b>		
In his situation is his Univis record good, fair or poor? <b>Poor</b>					
What is his principal difficulty? <b>Univis 15 Krypts in frame them</b>					
Any Complaints? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> See Remarks <b>15 new Univis about 15 new Univis should be better yet.</b>					
In Following up, Emphasis <b>General advantage</b>					

(Use Other Side of Blank for Remarks)

1015

Dealer's Name **Le Montinos** Street Address **4 Dayton East Ohio 3rd** City **Dayton Ohio**

Date **6/14/40** Credit **Optician** Exp. **F.L.** Coll. No. **1** Telephone **234**

Please Print Names, Numbers, etc.  
**SLUTSKY - - (Wingfield - -)**  
**SLUTSKY - -**

Upstairs <input type="checkbox"/>	Advertisements <input type="checkbox"/>	Bills <input type="checkbox"/>
Downstairs <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Postage <input type="checkbox"/>
Jeans Store <input type="checkbox"/>	Reception <input type="checkbox"/>	

Signature of One of Slutsky  
**Knight 90. Union 7. 15 - 20**

Your window number of pairs of glasses **15 - 20**

Printed Name <b>Valley Optical</b>	Trade Name <b>Valley</b>
Address <b>B - D.</b>	City <b>Dayton</b>

In my opinion, the quality of the work is **Good**

What is the general impression?  
**Don't stand out**

Any Comments?  
**No**

Signature of Customer **Quality, always**

Printed Name **Printed**

Order's Name <b>Gillespie, J. M.</b>	Street Address <b>35 Dayton, E. Ohio</b>	City and State <b>3rd</b>
EST JAN 16 1940		
Date <b>6/14/40</b>	Order Optician Optician Optician	Rep. P. L. <b>J. M. Gillespie</b>
Please Print Name, Address, etc.		
Uptairs <input type="checkbox"/> Downstairs <input checked="" type="checkbox"/> Jewelry Store <input type="checkbox"/>	Advertisement <input checked="" type="checkbox"/> Window Sticker <input checked="" type="checkbox"/> Newspaper <input type="checkbox"/>	Radio <input type="checkbox"/> Telephone <input type="checkbox"/> Mail <input type="checkbox"/> Telegram <input type="checkbox"/> Cable <input type="checkbox"/>
Percentage of Size of Sample		
<b>Knights 98, Union 6, Other</b>		
Your estimate of number of pairs of glasses that would be added monthly savings for him <b>6-92</b>		
Previous Order <b>Valley Opt.</b>	Current Order <b>Valley</b>	<b>20</b>
Style of Glasses Sold <b>B - D.</b>	Approximate Amount Sold <b>Good</b>	How do you like them? <b>Wash</b>
Is his attention to his Unavis round good, fair or poor? <b>Good</b>		
What is his principal difficulty? <b>Picks the patients.</b>		
Any Complaints? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> See Remarks <b>Butler, Chas. E. Merriam</b>		
In following up, emphasize: <b>Necessity of using the Merriam.</b>		
REMARKS (Use Other Side of Sheet for Remarks)		
<b>1017</b>		

# 616 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

James H. Erbaugh, O.D. Dayton, Ohio  
615-16 Mutual Home Bldg.

Date 5-8-41	Optician Optom <input checked="" type="checkbox"/>	Rep. <input checked="" type="checkbox"/> Call No. F. L. 1 VHE	Salesman
----------------	---	--	----------

Name Firm Members Managers Etc

Wife is secretary

<input checked="" type="checkbox"/> Upside <input checked="" type="checkbox"/> Downside <input checked="" type="checkbox"/> Jewelry Store	<input checked="" type="checkbox"/> Advertisements <input checked="" type="checkbox"/> Window Displays <input checked="" type="checkbox"/> Newspapers	<input type="checkbox"/> Radio <input type="checkbox"/> Pamphlets	Character of Practice <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Cheap
---	---	--	--

Percentage of Use of Refractive

100% Krypts

Your estimate of number of pairs of Unis that would be a good monthly average for him 4

Principal Jobber Valley	Univis Jobber Valley	Attitude toward Univis Jobber friendly
----------------------------	-------------------------	---

Style of Unis Used ?	Attitude toward Unis doesn't appreciate advantages.	Does He Make Effort to Use?
-------------------------	--	-----------------------------

In his situation is his Unis record good, fair or poor? poor

What is his principal difficulty? Says has poor clientele and does cash only biz and cannot afford to force Unis, where patient can use only Krypts as far as purp. in concerned. Cannot promise enough use to justify licensing but will use "where I feel the patient can afford or needs badly enough."

*He says he will give his further interest and he will make a big team in contact with him and he will make a good use of it. 1018*



UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 617

Dealer's Name <b>ELLIOTT</b> <b>Earl</b> <b>B.</b>		Street Address <b>603</b> <b>Reibold</b> <b>Bldg.</b>		City and State <b>Dayton,</b> <b>Ohio.</b>	
Date <b>6/14/40</b>	Optician <input checked="" type="checkbox"/>	Rep. <input checked="" type="checkbox"/> F. L.	Call No. <b>di</b>	Salesman <b>Maloney</b>	
REC'D JUN 18 1940					
Name Firm Members, Managers, Etc.					

Upstairs <input checked="" type="checkbox"/>	Advertisements? <b>NO</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals  
**15% for 90, Unim. 7, Other 1**

Your estimated number of pairs of Univis that would be a good monthly average for him **6-8 Pcs.**

Principal Jobber <b>-</b>	Univis Jobber <b>Kung (Cleveland)</b>	Attitude toward Univis Jobber <b>Good</b>
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Style of Univis Used <b>B DO</b>	Attitude toward Univis <b>Good</b>	Does He Make Effort to Sell? <b>Yes</b>
-------------------------------------	---------------------------------------	--

In his situation is his Univis record good, fair or poor?  
**Fair**

What is his principal difficulty?  
**Small practice**

Any Complaints?  
No ☒ Yes ☐

Outlook for Future  
**OK**

See Remarks

Is Following up, Emphasis  
**Quality**

REMARKS  
(Use Other Side of Blank for Remarks)

1019

# 618 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name <b>BRUNS OPTICAL CO</b>		Street Address <b>117 JEFFERSON</b>		City and State <b>DAYTON OHIO</b>	
Date <b>6/14/40</b>	Optician Optician <input checked="" type="checkbox"/> Optician <input checked="" type="checkbox"/>	Rep <b>F. L.</b>	Call No. <b>1</b>	Salesman <b>Maloney</b>	
REC'D JUN 14 1940					
Name of Firm Members, Managers, Etc.					

Upstairs <input type="checkbox"/>	Advertisements? <b>Yes</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

**3 Univis 6 Other**

Your estimate of number of pairs of Univis that would be a good monthly average for him **5-8 Pk**

Residence <b>Barber Valley Opt</b>	Business Address <b>Barber Valley Opt Co</b>	Attitude toward Univis Today <b>Good</b>
Style of Univis Used <b>B-D</b>	Attitude toward Univis <b>Good</b>	Does He Make Effort to Use <b>Somewhat</b>

In his situation is his Univis record good, fair or poor? **Fair**

What is his principal difficulty?  
**Scientific on the jaw side**

Any Complaints?  
No ☒ Yes ☐

Outlook for Future  
**Will make attention in the remarks and will increase**

is growing up. Improved  
**Quality, variety, price**

REMARKS  
(Use Other Side of Blank for Remarks)

102070



# 620 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name *Koch, C. M.* Street Address *130 S Main* City and State *Columbus, Ohio*  
*12/10/40* *12/10/40* *12/10/40*

Date <i>12/10/40</i>	Optician Optician <i>Optician</i>	Rep. F. L. <i>Rep.</i>	Call No. <i>See Rem.</i>	Salesman <i>J. Maloney</i>
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Name Firm Members, Managers, Etc.

Upstairs <input type="checkbox"/>	Advertises? <input type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

*Kayfets 92. Unusual. Other 10*  
 Your estimate of number of pairs of Univis that would be a good monthly average for him: *8-10. Per*

Principal Jobber <i>Looney</i>	Univis Jobber <i>Optical Co</i>	Attitude toward Univis Jobber <i>Good</i>
Style of Univis Used <i>D</i>	Attitude toward Univis <i>Good</i>	Does He Make Effort to Use? <i>Insignificant</i>

In his situation is his Univis record good, fair or poor?

What is his principal difficulty?

Any Complaints?

No ☒ Yes ☐  
 See Remarks

Outlook for Future

Is it looking up, Emphatic?

REMARKS  
 (Use Other Side of Blank for Remarks)

*1022*

Having called Mr. Reilly,  
 I had a social  
 meeting which turned into  
 a business meeting with  
 Rich on the evening.  
 discussed all phases  
 of the case particularly  
 emphasizing the inconsistency  
 of selling Krypt for \$14.50 -  
 what Rich did - and  
 only getting \$16<sup>00</sup> for Univas.  
 All in all it was a  
 valuable meeting,  
 much more having  
 been accomplished  
 than would have been  
 in an ordinary office call.  
 Am expecting Univas  
 increase from 1 cent.

1023



# 622 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name <b>Staley,</b> <b>Tos. H.</b>	Street Address <b>Court Circle</b> <b>ST</b>	City and State <b>OHIO</b>
Date <b>1/30/41</b>	Optician <b>Optician</b>	Rep. Call No. <b>1 J. Maloney</b>
Names Firm Members, Managers, Etc.		

REC'D FEB 3 1941

Upstairs <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			cheap <input type="checkbox"/>

Percentage of Use of Univis  
Bought 90 Univis 7 bought 3  
 Your estimate number of pairs of Univis that would be a good monthly average for him 7-10 pairs

Principal Jobber <u>W. H. Hume</u>	Univis Jobber <u>Charles</u>	Attitude toward Univis Jobber <u>Good</u>
---------------------------------------	---------------------------------	--

Style of Univis Used <u>D. B.</u>	Attitude toward Univis <u>Good</u>	Does He Make Effort to Use <u>Not sufficient</u>
--------------------------------------	---------------------------------------	---

In his attention to his Univis  
 better good, fair or poor? Fair

What is his principal difficulty?  
"I don't change whatever they"

Any Complaints: No <input type="checkbox"/> Yes <input type="checkbox"/>	Outlook for Future <u>Better. Good result</u>
---	--

Following Remarks:  
What a splendid job, I understood, he did at  
at times with Univis that the offer-  
ment - just as great 70147

Dealer's Name

Street Address

City and State

HEDGES,  
ROBERT  
E.210 CIRCLEVILLE,  
S. COURT  
ST. OHIO.Date 1/30/41  
Order Optician  
Optician  
Rep. P. L.  
Call No. 1  
J. Moloney

Name Firm Members, Managers, Etc.

REC'D FEB 3 1941

Has your Univis sales aide?

Upstairs <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

15 myopia 92, vision 5 rhr 3  
 Your estimate of number of pairs of Univis that would be a good monthly average for him 5-7 Pm.

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

Principal Jobber: Charles  
 Univis Jobber: Fair

Style of Univis Used

Attitude toward Univis

Does He Make Effort to Use?

Style of Univis Used: D  
 Attitude toward Univis: Good  
 Does He Make Effort to Use?: Reasonably

In his situation is his Univis record good, fair or poor?

In his situation is his Univis record good, fair or poor? Fair

What is his principal difficulty?

What is his principal difficulty? New business, building a practice

Any Complaints?

Outlook for Future

Any Complaints? No  
 Outlook for Future: He may develop into a fine optician, but will not

Following up, Emphasize

Following up, Emphasize: May be in Cleveland but it may not have been him

Features

REMARKS (Use other side of blank for Remarks)

REMARKS: as regards price, attitude is

# 624 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Name: Siegel, Leonard  
 Street Address: 233 Atlantic  
 City and State: Cincinnati, Ohio  
 Date: 4/15/40  
 Rep: 2  
 Salesman: Maloney

REV NOV 23 1940

Optician <input type="checkbox"/>	Advertiser <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Optometrist <input checked="" type="checkbox"/>	Window Display <input checked="" type="checkbox"/>	Pharmacist <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspaper <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Unis: 14 1/2%  
 Number of pairs of Unis: 10  
 Your estimate of number of pairs of Unis that could be a good monthly average for him: 8-10 Pairs

Principal Jobber: Central Opt Co	Attitude toward Unis Jobber: Good
----------------------------------	-----------------------------------

Style of Unis Used: D.B. Inf.	Attitude toward Unis: Good	Does He Make Effort to Use: Yes
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In his situation is his Unis covered good, fair, poor? Fair

What is his principal difficulty? Small practice

Any Complaints? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	Outlook for Future: Fair
---	--------------------------

See Remarks

Showing up Emphatically: Value of quality work as a practice builder

1026

over

11

Am scheduling an minutes  
display for Siegel beginning  
Jan 1, 1941. He is next door  
opposite to Gibson Hotel  
entrance. Thine &  
LVB 11/28/40

Also sending Tropical Temple  
I admire Siegel for  
his determination to succeed  
in this high rent ground  
floor location. I deserve  
of whatever cooperation  
we can give him.

# 626 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name: SIGLER Street Address: 39 1/2 City and State: HILLICOTH  
C.V. & B.W. PAINT Ohio  
ST.

Date: 1/30/41 Optician: Maloney Rep. F. L. Call No. 2

Names Firm Members Managers Etc.

I saw C.V. Sigler

FEB 3 1941

Has your Univis sales aid?

Upstairs ☒ Downstairs ☒ Jewelry Store ☐ Advertisements ☒ Window Displays ☐ Newspapers ☐ Radio ☐ Pamphlets ☐ Character of Practice: High ☐ Average ☒ Cheap ☐

Percentage of Use of Univis

Univis 95 Using 4 other  
 Your estimate of number of pairs of Univis that would be a good monthly average for them: 7-8 Pairs

Former Jobber: Peerless Univis Jobber: C. H. Attitude toward Univis Jobber: C. H.

Style of Univis Used: D.B. Attitude toward Univis: Good Does He Make Effort to Use? Weak

In his situation is his Univis good, fair or poor? Poor - fair

What is his principal difficulty? Practically no patients

Any Complaints? No ☒ Yes ☐

Is following up, explaining, etc. done? Yes Explain the Univis

the amount a patient will pay for them? Yes

Use this as follows: up 1028



# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 627

Name: 43 Hillcothe, E. Max  
 Street Address: Hillcothe, E. Max  
 City and State: Ohio  
 Rep. ☒ Call No. 2 Salesman Aloney  
 Name from Members' Manners Kit

REC'D FEB 3 1941

Advertisements ☒ Yes ☐ No  
 Window Displays ☒ Yes ☐ No  
 Radio ☐ Pamphlets ☐  
 Character of Practice  
 High ☐  
 Average ☐  
 Cheap ☒

Name of User of Univis  
Aloney 97, Union 20th 3  
 Number of pairs of Univis that  
 would be a good money average for him 3-4 Pairs

Principal Jobber Univis Jobber  
Univis Jobber  
 Attitude toward Univis Jobber O.K.

Styles of Univis Used D.S.  
 Attitude toward Univis O.K.  
 Does He Make Effort to Use No

Is the situation in his Univis  
 good, fair or poor? Fair

What is his principal difficulty?  
Price

Are Complaints? Yes ☐ No ☒  
 See Remarks Fair  
 Outlook for Future

A. F. W. H. E. Univis  
Univis

REMARKS  
(Use Other Side of Blank for Remarks)

1029

# 628. UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name

Street Address

City and State

Riebel,  
George

ASHLAND,  
OHIO

Date 12/5/40    Dealer    Rep. F. L.    Call No. 1    Salesman J. Maloney

Named Firm Members, Managers, Etc.

Exhibitor <input type="checkbox"/>	Advertiser <input type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice	
Insurance <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>		High <input type="checkbox"/>
Travelling Sales <input type="checkbox"/>	Newspapers <input type="checkbox"/>			Average <input type="checkbox"/>
			Cheap <input type="checkbox"/>	

Percentage of Use of Binoculars 80%    Character of Use 1  
 Estimate of number of pairs of binoculars that are a good medium for him 3-5 Pairs

Principal Officer	Univis Jobber	Attitude toward Univis Jobber
	Geo. E.	OK

Attitude of Univis User	Attitude toward Univis	Does He Make Effort to Use?
	Good	Doesn't

Reasons for Use of Univis

Good little eye work. I believe

Only few minutes used him

Probably does more general

work with them eye. than with other

REMARKS

(See Other Side of Blank for Remarks)

1030

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 629

Dealer's Name	Street Address	City and State
KIDWELL, C C 14/40	14 W. Main	ASHLAND, OHIO

Date	Optician	Rep.	Call No.	Salesman
12/5/40	Optician	R. L.	1	Voloney

Names Firm Members, Managers, Etc.

Upstairs	Advertising?	Radio	Character of Practice
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> No	<input type="checkbox"/>	High <input type="checkbox"/>
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	Average <input checked="" type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Cheap <input type="checkbox"/>

Percentage of Use of Univis

Knight 98, Change 3, Other

Your estimate of number of pairs of Univis that would be a good monthly average for him: 3-4 (2)

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
	Univis Jobber	Good

Style of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
D. R.	Good	No

In his situation is his Univis record good, fair or poor? Poor

What is his principal difficulty? Knight man - price

Any Complaints? No ☒ Yes ☐ Look for Future

See Remarks

in Following up, Emphasize

REMARKS  
(Use Other Side of Blank for Remarks)

1031

I have been thinking  
 much of late. It is  
 not an unusual thing  
 to feel sad and lonely  
 when the day is over. I have  
 often thought of the  
 things that I have  
 done and of the things  
 that I have not done.

W. C. ... street  
... by ... want  
... ... according  
... the ...  
...  
...  
...

I had and in 1809 bought  
with 9 1/2 30 year old American  
Kendall's Journal of the  
falling and going there  
in a family in 1809

As for Clara - my understanding  
that a sister of hers is sought  
to decide whether she is worthy  
the best is an ordinary case

1032

City and State

INDIANAPOLIS, INDIANA

CHICAGO, ILL.

Scientist

Maloney

Case Number Workers No.

100-1048

Special	Advertisements <input checked="" type="checkbox"/> <i>no</i>	Radio <input type="checkbox"/>	Character of Practice High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Cheap <input type="checkbox"/>
Leaflets	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	
Leaflet Service	Newspapers <input type="checkbox"/>		

Percentage of Use of Univis

*95% Univis 3 Other*

estimate of number of pairs of Univis that will be a good monthly average for him *2-6 Pm*

Principal Jobber <i>G O</i>	Univis Jobber <i>Reese Opt</i>	Attitude toward Univis Jobber <i>Good</i>
--------------------------------	-----------------------------------	--

Style of Univis Used <i>DB</i>	Attitude toward Univis <i>Good</i>	Does He Make Effort to Use? <i>Weak</i>
-----------------------------------	---------------------------------------	--

In this situation is his Univis record good, fair or poor? *Good*

What is his principal difficulty?

*Obligated to A.O. since then 95% of his work.*

Any Complaints? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	Outlook for Future <i>Flakety says he will soon discharge his obligation</i>
--	---

See Remarks *He can trade with Reese, or he foregoes.*

Following up, Emphasize *Protection*

REMARKS  
(Use Other Side of Blank for Remarks)

1033



# 632 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Name WHITESIDE Street Address 135 2nd Natl Bk Bldg City and State AKRON, OHIO  
 Date 12/6/40 Agent Maloney Salesman Maloney  
 Character of Practice High  
 Average ✓  
 Cheap ✓

REC'D DEC 9 1940

Type of Business 10 Radio ☐  
 Window Displays ☐ Pamphlets ☐  
 Newspapers ☐ Character of Practice ☐  
 High ☐  
 Average ☒  
 Cheap ☐

Percentage of Sales of Refractive Lenses 25  
 Your estimate of number of pairs of Univis that would be a good monthly average for him 20 Pairs

Principal Jobber Wray Univis Jobber Wray Attitude toward Univis Jobber Good

Styles of Univis Used all Attitude toward Univis Good Does He Make Effort to Use? Yes

In his situation is his Univis record good, fair or poor? Good

What is his principal difficulty? None. (all his business done by Wray)

Any Complaints? No Outlook for Future Good. Longly typical analysis

Remarks Will stop some of the older type of philosophy

Following up, Emphasis Appreciation

REMARKS And the fact that Univis is best for all  
 1034

# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 633

Dealer's Name

Street Address

City and State

Latta, Flatiron Akron,  
I.R. Bldg. (1)

11/1/40

Date 12/6/40	Optician Optom ✓	Rep F.L.	Call No. 2	Salesman Maloney
-----------------	---------------------	-------------	---------------	---------------------

Names Firm Members, Managers, Etc.

REC'D DEC 11 1940

Upstairs <input checked="" type="checkbox"/>	Advertises <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Bifocals

15 my pts 90. Union 8 the 2

Your estimate of number of pairs of Unis that would be a good monthly average for him

18-18 pm

Principal Jobber How business	Univis Jobber Glas. Welf	Attitude toward Univis Jobber C. 5
----------------------------------	-----------------------------	---------------------------------------

Style of Unis Used D.B	Attitude toward Unis Good	Does He Make Effort to Use? Yes, but imperfect
---------------------------	------------------------------	---

In his situation is his Unis record good, fair or poor?

Fair

What is his principal difficulty?

Inclined toward low prices

Any Complaints?

No ☒

Yes ☐

See Remarks

Outlook for Future

yes continue good and  
inclined to use pamphlets

Following up, Emphasize:

Protection! Protection! Protection!

REMARKS  
(Use Other Side of Blank for Remarks)

1035

# 634 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Name *Camden* Address *53* City and State *Camden, N. J.*  
 V. A. *14244*

Date *3/3/41* Subject *Univis* Rep. Call No. *1* Examiner *W. H. Halsey*  
 Division *1*

Firm Name *Univis* Mfg. *Univis*

Delays *2* Advertisements *2* Radio *2* Character of Practice *High*  
 Downstairs *2* Window Displays *2* Telephone *2* Average *2*  
 Jewelry Store *2* Newspapers *2* Cheap *2*

Estimate of No. of pairs of Univis that would be a good month's business *46*

Is he a good jobber? *Yes* Univis jobber? *Yes* Attitude toward Univis? *Good*  
*White Hair* *Charles*

Styles of Univis Used *B* Attitude toward Univis *Good* Does He Make Effort to Use? *No*

In his situation is his Univis record good, fair or poor? *Good*

What is his principal difficulty? *Does practically none of his own dispensing*

Any complaints? *Some to local optician business*  
 No ☐ Yes ☐ Remarks *However, like many opticians, well of it and attempting*

On basis of this information will you change your mind? *Yes* *would use. So do not remove. Can do in a bit more good on than off*

REMARKS *Other Side of card for Remarks*

1036

# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 635

Dealer's Name

Street Address

City and State

BUTTERFIELD,  
H. S.

201  
First  
Trust  
Bldg

Zanesville,  
Ohio

10/41

10 1941

Date

Optician  
Optician  
Optician

Rep.

Call No.

Salesman

13/41

F. L.

Maloney

Names: Firm Members, Managers, Etc.

BUTTERFIELD H. S. - O. D. (Wife)  
BUTTERFIELD David B. - O. D. (Son)  
Drew H. S. B.

Upstairs ☒  
Downstairs ☐  
Jewelry Store ☐

Advertisements ☒  
Window Displays ☐  
Newspapers ☐

Radio ☐  
Pamphlets ☐

Character of Practice  
High ☒  
Average ☐  
Cheap ☐

Percentage of Use of Univis

Kingsley 85 Union 13, 7th & 15-16 Pr.

Your estimate of number of pairs of Univis that would be a good monthly average for him

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

Isaac

Optical

Good

Style of Univis Used

Attitude toward Univis

Does He Make Effort to Use?

Cell

Good

Yes

Is his attention to his Univis good and fair or poor?

Good

What is the principal difficulty?

None

Any Complaints?

Yes

Good. Order. I have been  
purchased the suitcases  
from Kingsley to Union 13, 7th & 15-16 Pr.  
We are given constant work.

Check for Figure

See Remarks

Signature of Representative

REMARKS  
Set of Blank for Remarks

Signature of Representative  
H. S. Butterfield

1037-27

636 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name **BUCKNOR,** Street Address **124 N. Natl. Bldg.** City and State **ZANESVILLE Ohio**  
**W. C.**

Date **2/3/41** Occlus. Optician ☒ Rep. **P. L.** Call No. **1** Salesman **J. Maloney**  
 Name Firm Members, Managers, Etc.

RECEIVED 10 1941

Upstairs <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/> <b>NO</b>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of time of business **King's 90; Smith's 10; others 4.**  
 Your estimate of number of pairs of Unis that would be a good monthly average for him **2 - 3**

Principal Jobber **W. C. Bucknor** Unis Jobber **At present none** Attitude toward Unis Jobber **Positive**

Styles of Unis Used **0 19** Attitude toward Unis **0 19** Does He Make Effort to Sell **No**

Is his satisfaction in his Unis record good, fair or poor? **Good**

What is his principal difficulty? **Hasn't too gotten started on Unis**

Any Complaints? **No** ☒ Yes ☐ **mention the possibility of these optical & vision**

See Remarks **will follow it up.**

General History, Appearance - **10/38**

1038



Dealer's Name Weaver, Strauss - Youngstown,  
Sheridan Hirschberg Ohio  
L. H. Co.

Date <u>11/9/40</u>	Optician <u>Optician</u>	Rep. <u>F. L.</u>	Call No. <u>L</u>	Signature <u>J. Maloney</u>
------------------------	-----------------------------	----------------------	----------------------	--------------------------------

Name Firm Members, Managers, Etc.

DEC 16 1940

Optician <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
<u>DEPT</u>			Chap <input type="checkbox"/>

Percentage of Use of Univis  
15 right 90, left 2, Union 5, etc.  
 Your estimate of number of pairs of Univis that would be a good monthly average for him 7-8 Pks

Principal Jobber <u>Quincy Optical Co.</u>	Univis Jobber <u>Quincy Optical Co.</u>	Attitude toward Univis Jobber <u>Good</u>
---	--	--

Style of Univis Used <u>D. B.</u>	Attitude toward Univis <u>Good</u>	Does He Make Effort to Use? <u>Weak</u>
--------------------------------------	---------------------------------------	--

In his situation is his Univis record good, fair or poor?  
Good

What is his principal difficulty?  
Set 14.00 for right eye & get more than 14.00 for left eye.

Any Complaints?  
 No ☒ Yes ☐  
 See Remarks He was told, but he didn't like the idea of wearing a Univis.

Follow-up on Remarks:  
Protection. How many days, that is, in winter

REMARKS  
 (Use Other Side of Sheet for Remarks)

1039 77

## 638 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Customer's Name

Street Address

City and State

Hill 125 ... Youngstown  
George A. Bice  
T. Hill 40 ... Ohio  
Nov 25 1940

Date 11/9/40  
Optician  
Rep. F.I.  
Call No.  
Salesman Maloney  
James Firm Members Managers Etc

Wanted to see Dr. Hall but was forced to leave before he was just in order to keep a gift

Upstairs <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

Keypets 85, Binoculars 7, Lenses 6, Other

Your estimate of number of pairs of Univis that would be a good monthly average for him.

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

Style of Univis Case

Attitude toward Univis

Does He Make Effort to Use?

In his situation is his Univis record good, fair or poor?

What is his principal difficulty?

Any Complaints?

Outlook for Future

No ☐Yes ☐

See Remarks

Following up Emphasis

REMARKS

(Use Other Side of Blank for Remarks)

1040

Dealer's Name

Street Address

City and State

Earle,

Urbana,

P. R.

Ohio

1-11-40

Date 1/19/40	Dealer Optician Optom.	Rep. P. L.	Call No. 2	Salesman J. Malone
-----------------	------------------------------	---------------	---------------	-----------------------

Names Firm Members, Managers, Etc.

RECD DEC 23 1940

Upstairs <input checked="" type="checkbox"/>	Advertisements?	Radio <input type="checkbox"/>	Character of Printing
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

15 nights 9th Union F. Th. 1  
Your estimate of number of pairs of Univis that  
would be a good yearly average for him 2-3 Pcs

Principal Jobber Pearless Urbana	Univis Jobber [Signature]	Attitude toward Univis Jobber OK
--	------------------------------	--

System of Univis Used D. B.	Attitude toward Univis Good	Does it [Signature]	It is Use? [Signature]
--------------------------------	--------------------------------	------------------------	---------------------------

In his situation is his Univis  
record good, fair or poor? Poor

What is his principal difficulty?  
Poor character, poor salesman

Any Complaints? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	Outlook for Future Fair, Am losing Double made, via Urbana
--	--

Followed up. Emphasize  
Univis Cream Demonstrator

REMARKS  
(Use Other Side of Blank for Remarks)

1041

# 640 UNITED STATES VS. THE UNIVIS LENS CO., INC. ET AL.

Dealer's Name

Street Address

City and State

Parker

503

Tulsa

CHAS

M. J. J.

503

Tulsa

Date

Order

Rep

Call No

Signature

1/2

1/2

1/2

1/2

1/2

Name Firm Members Managers Etc

Upstairs

Downstairs

Jewelry Store

Advertisements

Window Displays

Newspapers

Radio

Pamphlets

Character of Practice

High

Average

Cheap

Kroyfts 25 Am. J. C. This

Your estimate number of pairs of Unis that could be a real monthly average for him

1042

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

White-Hair Dalton drill

Styles of Unis Used

Attitude toward Unis

Does He Make Effort to Use

7

6 H

10

In his situation is his Unis record good, fair or poor?

Low

What is his principal difficulty?

Almost 100% White Hair. Brown jawed?

Any Complaints?

No

Yes

See Remarks

Only had one moment with Becker. Quite busy. Unis unable to

Explain up. Emphasize

Lowest Unis posture

REMARKS

Use Other Side of Blank for Remarks

1042

UNITED STATES VS. THE UNIVIS LENS CO., INC.: ET AL. 9641

Street Address

City and State

530

CHIO

Salutation

Mr. Mahoney

Members, Members, Etc.

5 1941

Radio

Character of Practice

High

Average

Cheap

Learn 1st time

1st - 1st

Other

Latitude toward Union Labor

Webb

States of Union Used

Latitude toward Union, does He Make Effort to Use

Good yes

States of Union Used

Good fair

Principal difficulty?

no more but with more

States of Union Used

Latitude toward Union

Yes

See Remarks

effort would be better

States of Union Used

Objection

REMARKS

(Use Other Side of Blank for Remarks)

1043



## 642 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name **Oswald, Robert** Street Address **530 Cherry St** City and State **Toledo Ohio**

Date **12/15/40** Occultist ☐ Optician ☒ Optom. ☐ Rep. **F. L.** Call No. **2** Salesman **Maloney**

Names: Firm Members, Managers, Etc.

REC'D DEC 5 1940

Upstairs ☐ Advertisements? **yes** Radio ☐ Character of Practice ☐  
Downstairs ☒ Window Displays ☒ Pamphlets ☐ High ☐  
Jewelry Store ☐ Newspapers ☐ Average ☒  
Cheap ☐

Percentage of % of Unisols **85** Unisols **13** Other

Your estimate of number of pairs of Unisols that would be a good monthly average for him **10-12**

Principal Jobber **Dutton** Extra Jobber **Wells** Attitude toward Unisols Jobber **Good**

Style of Unisols Used **D to** Attitude toward Unisols **Good** Does He Make Effort to Sell **yes**

Is his situation in his Unisols record good, fair or poor? **Good**

What is his principal difficulty? **low income neighborhood**

Any Complaints? **No** ☒ Yes ☐ **Good. But was complaining some dangerous ideas on**

Following up, Emphatic: **James S. Dutton will not watch the situation.**

REMARKS **Protection**

1044

UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 643

Dealer's Name

Street Address

City and State

Mercer,  
W. E.

BELL  
BLDG

TOLEDO,  
O

<input checked="" type="checkbox"/> Agent	<input checked="" type="checkbox"/> Optical Optician Optician	Rep P. L.	Call No. ✓	Salesman Meloney
---	---	--------------	---------------	---------------------

Names Firm Members, Managers, Etc.

110 220 3 1040

Lighting <input checked="" type="checkbox"/>	Advertisements <input checked="" type="checkbox"/> 110	Radio <input type="checkbox"/>	Character of Practice
Window Displays <input type="checkbox"/>	Newspapers <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Reading Store <input type="checkbox"/>			Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Binoculars

15 my f. 97. Thos. in ill. 3  
5-1-2 Pm

Principal Jobber U. O. Thompson	Univis Jobber H. L. L. L.	Attitude toward Univis Jobber O. K.
------------------------------------	------------------------------	--

Style of Univis Used D	Attitude toward Univis O. K.	Does He Make Effort to Use? No
---------------------------	---------------------------------	-----------------------------------

Is satisfaction in his Univis  
good, fair or poor? Good

What is his principal difficulty?

Univis. They are "good enough."

Outlook for Future  
Questionable. He needs a one-hour  
lecture on the Univis lens.

Remarks  
Good make. In time will be  
brought around

REMARKS  
other Side of Blank for Remarks

1045

# 644 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name

Street Address

City and State

Leatherman,  
B. E.

501 Tolon  
Bldg

Toledo,  
OHIO

(in D.) 10/40

Date 10/10/40	Optician Optician	Rep F. L.	Call No. Y	Salesman Maloney
------------------	----------------------	--------------	---------------	---------------------

Name Firm Members, Managers, Etc.

Epistors <input type="checkbox"/>	Advertisers <input type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Chiropractors <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input type="checkbox"/>
			Good <input type="checkbox"/>

Use of Bifocals  
15-20

Your estimate of number of pairs of lenses that would be available monthly average for each

Principal Jobber C. O.	Local Jobber Whelan	Attitude toward Univis Jobber Good
---------------------------	------------------------	---------------------------------------

Source of Univis Used Univis	Attitude toward Univis Good	Does He Make Effort to Sell Yes
---------------------------------	--------------------------------	------------------------------------

Is he the principal of the store?

Yes

Is he the principal of the store?

Yes

Is he the principal of the store?

Yes

Is he the principal of the store?

Yes

Is he the principal of the store?

Yes

Is he the principal of the store?

Yes

Is he the principal of the store?

1046

Dealer's Name

Street Address

City and State

Lambert,  
C.A.

301  
St

Toledo

11/14/40

Spain

Date 11/14/40	Occultist Optician Optom	Rep. F. L.	Call No. ✓	Salesman J. Maloney
------------------	--------------------------------	---------------	---------------	------------------------

Names Firm Members, Managers, Etc.

Upstairs <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average
			Cheap

Percentage of Firm's Business

Printer 95

Your estimate of number of orders would be a good monthly average

Principal Jobber

Chief Jobber

Address of Jobber

Principal Jobber

Chief Jobber

Address of Jobber

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

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Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

Number of Units Sold

Amount of Cash Received

Time of Sale

1047





# UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL. 647

Dealer's Name GOLDBERG, Harry L. Street Address 63 EDISON ELDG City and State TOLEDO OHIO

Date 1/30/20 Oculist Optician Rep. F L Call No. 1 Salesman Maloney

Names Firm Members, Managers, Etc.

Exposure ☒ Advertisers 10 Radio ☐ Character of Practice ☐  
 Bookstore ☐ Window Displays ☐ Pamphlets ☐ High ☐  
 Jewelry Store ☐ Newspapers ☐ Average ☒  
 Cheap ☐

Percentage of Use of Bifocals

1 night 98% others

Your estimate of number of pairs of Univis that would be a good monthly average for him

5 Pn

Principal Jobber 1 Univis Jobber Dactor Webb Attitude toward Univis Jobber OK

Style of Univis Used B Attitude toward Univis Good Does He Make Effort to Use? I doubt it

In his occupation is his Univis record good, fair or poor?

Good

What is his principal difficulty?

Small practice, only licensed short time

Any Complaints?

No ☒ Yes ☐

Outlook for Future

Better - long by experience

See Remarks

Should improve

Following up, Emphasis

Stewart Galtman

REMARKS

Use Other Side of Blank for Remarks

1049

# 648 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

Dealer's Name **GOLDBERG, HARRY** Street Address **EDISON - Toledo** City and State **TOLEDO**

Date **4/26/41** Optician ☒ Optom ☒ Rep. ☒ Call No. **2** Salesman **Maloney**

Names Firm Members, Managers, etc. **Maloney**

1941 APR 28 1941

Has what Univis sales aids?

Upstairs <input checked="" type="checkbox"/>	Advertisements <b>10</b>	Radio <input type="checkbox"/>	Character of Practice <input type="checkbox"/>
Downstairs <input type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Sales by Univis **95**

Your estimate of number of pairs of Univis that would be a good monthly average for him **10**

Principal Jobber **G.O.** Univis Jobber **Talton** Attitude toward Univis Jobber **Good**

Style of Univis Used **D** Attitude toward Univis **Good** Does He Make It **Yes**

Is his situation in his Univis record good, fair or poor? **Good**

What is his principal difficulty? **Customary**

Small practice **Small practice**

Any Complaints? **No** ☒ **Yes** ☐ **He is having a struggle**

See Remarks **Good man. He is a**

Following up Emphasis **General** **Features**

REMARKS **Use Other Side of Blank for Remarks**

1050



# 650 UNITED STATES VS. THE UNIVIS LENS CO., INC. ET AL.

Dealer's Name

Street Address

City and State

Edward Spitzer  
Arcade

Toledo

Date 11/9/40  
Oculist  
Optician  
Optom  
Rep. F L  
Call No. 2  
Salesman

Names? Firm Members, Managers, Etc.

Upstairs <input type="checkbox"/>	Advertises <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Downstairs <input checked="" type="checkbox"/>	Window Displays <input checked="" type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Cheap <input type="checkbox"/>

Percentage of Use of Univis

Knight Union 13

Your estimate of number of pairs of Univis that would be a good monthly average for him

10-12

Principal Jobber

Univis Jobber

Attitude toward Univis Jobber

Principal Jobber Webb  
Univis Jobber Good

Styles of Univis Used

Attitude toward Univis Does He Make Effort to Use

DE Good

In his situation, is his Univis good, fair or poor?

fair good

What is his principal difficulty?

Hesitates to change Knight weaver to Univis

Any complaints?

No ☒ Yes ☐

See Remarks

Write up, emphasize

That thousands of Knight weaver are changed to Univis 105%

REMARKS

See Remarks

Dealer's Name **BLAKE, Hugh P.** Street Address **816 Starr Ave** City and State **Toledo, Ohio**

Date **4/26/41** Optician ☒ Rep. **F. L.** Call No. **2** Salesman **Maloney**

Names Firm Members, Managers, Etc.

REC'D APR 28 1941

Univis Sales Code **10**

Lighters <input type="checkbox"/>	Advertisements <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Stationery <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Travel Brochures <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input checked="" type="checkbox"/>
			Chap <input type="checkbox"/>

Percentage of Use of Bifocals **Kniffler 95, Union 5**

Your estimate of number of pairs of Univis that would be good monthly average for him **8-19**

Principal Jobber <b>all jobbers</b>	Univis Jobber <b>D. Webb H. Leslie</b>	Attitude toward Univis Jobber <b>0.15</b>
-------------------------------------	--	---

Style of Univis Used <b>all</b>	Attitude toward Univis <b>Good</b>	Does He Make Effort to Use? <b>Insufficient</b>
---------------------------------	------------------------------------	---

In his situation is his Univis rated good, fair or poor? **Poor - fair**

What is the principal difficulty? **See Remarks**

Any Complaints?	Outlook for Future
No <input type="checkbox"/> Yes <input type="checkbox"/> See Remarks	<b>See Remarks</b>

Following up, Emphasize

**See**

REMARKS (Use Other Side of Blank for Remarks)

1053





Dealer's Name

Street Address

City and State

Velen,

807  
Stear  
Ave.

Toledo

B.L.

1/6/93

1944

Date 1/3/0	Optician Optom. <input checked="" type="checkbox"/>	Rep. F. L. <input checked="" type="checkbox"/>	Call No. 2	Salesman Maloney
---------------	--	---	---------------	---------------------

Names Firm Members; Managers, Etc.

Opticians <input type="checkbox"/>	Advertisers? <input checked="" type="checkbox"/>	Radio <input type="checkbox"/>	Character of Practice
Examiners <input checked="" type="checkbox"/>	Window Displays <input type="checkbox"/>	Pamphlets <input type="checkbox"/>	High <input type="checkbox"/>
Jewelry Store <input type="checkbox"/>	Newspapers <input type="checkbox"/>		Average <input type="checkbox"/>
			Cheap <input checked="" type="checkbox"/>

Percentage of Use of Bifocals

15% 95% Univis 4% other

Your estimate of number of pairs of Univis that could be a good monthly average for him. 4-5 Pairs

Principal Jobber	Univis Jobber	Attitude toward Univis Jobber
	Maloney - Univis	

Types of Univis Used	Attitude toward Univis	Does He Make Effort to Use?
HT	Good	Weak

What is his situation in his Univis world good, fair or poor? Good

What is his principal difficulty?

Business very quiet, good clients

Any Complaints?	Outlook for Future
No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	The suggestions I made of
Remarks	General discussion should

Working up, Emphasize

Quality

REMARKS  
(Use Other Side of Blank for Remarks)

1055



1056 In United States District Court, Southern District  
of New York

Civil—No. 10-392

UNITED STATES OF AMERICA, PLAINTIFF

THE UNIVIS LENS CO., INC., ET AL., DEFENDANTS

Appearances: Robert H. Jackson, Esquire, Attorney General of the United States, Attorney for Plaintiff. Samuel S. Isseks, Esquire, Special Assistant to the Attorney General. Stanley E. Disney, Esquire, Irving B. Glickfeld, Esquire, John E. McCracken, Esquire, George L. Derr, Esquire, Special Attorneys. Frederick S. Duncan, Esquire, Toulmin & Toulmin, Esquires, Attorneys for Defendants. Frederick S. Duncan, Esquire, H. A. Toulmin, Esquire, H. A. Toulmin, Jr., Esquire, Rowan A. Greer, Esquire, of Counsel.

*Opinion*

September 17, 1941

1057 GALSTON, D. J.

The complaint charges violations of Secs. 1 and 3 of the Sherman Anti-Trust Act and alleges that the Univis Lens Co., Inc. (which will hereafter be referred to as the Lens Company) manufactures bifocal lenses pursuant to an unlawful combination and conspiracy in which the Univis Corporation is accused of having unlawfully set up a system of price control through the issuance of licenses to the Lens Company and others and by means of so-called Fair Trade agreements to certain wholesalers and retailers; that such lenses are covered by patents owned by the Univis Corporation and that the Lens Company owns a majority of the stock and controls the activities of the Univis Corporation. The individuals named as defendants are officers in both companies.

It is alleged that the conspiracy to restrain interstate commerce in bifocal lenses consisted in combining

(1) to designate, and select, according to certain arbitrary rules and regulations, wholesalers and retailers to handle and deal in bifocal lenses manufactured by defendant Univis Lens Company;

(2) to sell such bifocal lenses only to such designated and selected wholesalers and retailers;

(3) to restrain such wholesalers and retailers from selling to other wholesalers and retailers not so selected; and

(4) to fix uniform, arbitrary and unreasonable prices at which such wholesalers and retailers could resell such bifocal lenses.

The challenged plan adopted by the defendants involved three types of licenses to control all stages of the marketing of Univis bifocal lenses, through licenses to wholesalers, to retailers with facilities for finishing rough or semi-finished bifocal lenses, and to prescription licensees, i. e. retailers with no finishing equipment. By these means, so the Government contends, the defendants maintain a complete control of the marketing of Univis bifocal lenses including the fixing of minimum resale prices to the purchasing public. It is asserted that they refuse to issue licenses to wholesalers and retailers who are price-cutters or who otherwise engage in business practices of a nature disapproved by the defendants; also that the Lens Company sells the rough lens blanks only to Univis licensees or to consumers. Accordingly the Government seeks to have the contracts and combinations and conspiracies in restraint of interstate commerce decreed unlawful and the defendants enjoined.

The defendants admit that the Lens Company and the Univis Corporation to all intents and purposes are the same and that the individual defendants have owned or control both corporations. The Univis Corporation avers that it has consistently followed an "open and" license policy by which all licensees of the same class are charged the same license fee and have the same prices fixed for performing the same manufacturing service; and that the licenses are open to all qualified licensees. The basis of its policy is the maintenance of highest standards of quality, service and performance by each licensee at each stage of the manufacturing process. Such policy is founded upon the peculiar nature of the business of manufacturing, prescribing, fitting and distributing eyeglass lenses in a series of successive steps, by different types of manufacturing establishments at different distances from the customer. It is said that the "blanks" must be manufactured out of blocks of glass in which the near vision inserts are fused to form the same fabricated product from which the bifocal lenses are ultimately to be made; also that the lens blank, at such stage of manufacture, is not useful as an eyeglass lens and must be subjected to manufacturing processes by other licensees and finally fitted to the eyes of the wearer through a suitable examination of the eyes. As a matter of practice the retailer licensee who is in direct contact with the customer



is alleged to participate in the manufacturing steps of fitting the lenses in accordance with the prescription of the lens in that he must determine the shape, the centering and the positioning thereof on the face of the wearer and the mounting of  
 1060 the lens in a frame in order to give the maximum vision and comfort to the wearer. The prescription for grinding is forwarded to a wholesaler to whom the lens blank has been sold by the Lens Company. The lenses when completed are then in turn delivered to the finishing retailer who adjusts and fits them to the eyes of the wearer.

On the question of price the answer alleges that the wholesaler purchases the manufactured rough Univis blank generally for \$3.25. The process practiced by the wholesaler in following the prescription received from an optometrist, dispenser or ophthalmologist entails great accuracy and requires, so it is alleged, from three and a half to four hours for each pair of lenses. The wholesaler receives an average gross profit of approximately \$3.70 for a pair of lenses. The total average margin of gross profit for the retailer is stated to be about \$9 per pair of lenses.

Specifically answering the complaint the defendants deny any violations of the Sherman Act and aver that until the manufacture of the products under the patents and trade-marks is completed and delivered to the ultimate wearer of the lenses there has not passed in interstate commerce any such thing as a bifocal lens; that the blanks are not bifocal eyeglass lenses; that what passes  
 1061 from the Lens Company to the wholesaler is a blank, not an eyeglass lens and that there is but one sale of the completed lens and that occurs when the retailer sells it to the customer, the particular user.

The Government's proof establishes that the Lens Company manufactures bifocal blanks under license from the Univis Corporation. The license between the two corporations refers to other contracts which are not before the court and accordingly is not in itself a complete instrument. It does appear that the Univis Corporation is to receive on all lenses manufactured in the United States and sold in the United States by the Lens Company a royalty of \$.50 per pair to be paid by the Lens Company to the Univis Corporation. The Lens Company is to sell to none other than those appearing from time to time on an approved list of prescription purchasers to be submitted by the Univis Corporation. On the whole the instrument affords very unsatisfactory proof of the terms and conditions of the agreement between the Univis Corporation and the Lens Company.

It is important at this stage to understand what a lens blank is. Silverman's definition, and it is not contradicted in the case, is that such a blank is a rough piece of glass or a partly manufactured

piece of glass. As manufactured and distributed by the Lens Company the lens blank consists of reading and distance segments; and in the case of trifocal lenses a reading segment, 1062 distance segment, and an intermediate segment. The great bulk of the business done in the manufacture and distribution of the lens blanks by the Lens Company is of the bifocal character. The Lens Company sells these lens blanks to licensed distributors known as wholesalers; also to grinding finishing licensees and to dispensing opticians who have complete grinding laboratories. In other words, the Lens Company has two types of customers; wholesalers and retailers. It is of importance to note that the lens blank sold by the Lens Company to either wholesalers or retailers could be used for no other purpose than as a lens blank to be made into a finished optical bifocal lens. The Lens Company employs service men to educate the lens grinders employed by the licensees; for these Univis lens blanks are computed on a series of corrective curves, i. e. a series of curves for each individual prescription to the end that the widest angle of vision may be obtained by the consumer. Such curves have been the subject of computation by the technical department of the Lens Company, are charted, and the chart discloses the curve to be ground on every prescription. In addition special tools are furnished to the wholesaler or finishing retailer.

It is important to distinguish between the finishing retailer and the prescription retailer. The former has a complete grinding 1063 ing and finishing laboratory comparable to that of the wholesaler and performs the same functions, the same grinding and finishing operations, as does a wholesaler and supplies the lenses through the stages of fitting and designing directly to the public.

A prescription retailer, if he is an optometrist, examines the patient's eyes, prescribes the lens, designs the size, the shape, and contour thereof to conform with the patient's peculiar facial characteristics; designs the size, heights and positioning of the reading segment to conform to the patient's particular vocation or other personal requirements. These specifications he forwards to a laboratory for completion. On receipt of the completed lenses from the laboratory he fits the lenses to the patient's face.

To determine whether the licensing scheme of the defendants is within the monopoly of the patent grant it is necessary critically to examine the terms of these licenses.

Concededly the Lens Company has the right to manufacture lens blanks and to sell them as restricted by the Univis Company only to those who are either licensed wholesalers or licensed retailers. There can be no doubt that the owner of a patent has the right to

license another to make and sell the patented article only to purchasers approved or designated by the licensor.

In the second stage of the licensing plan, that which 1064 is manufactured by the Lens Company passes by sale to such designated or approved purchasers as have been licensed by the Univis Corporation to complete the manufacturing under the patents, i. e. to convert the lens blank into a lens. But if the thing sold by the Lens Company is the patented article and that article becomes the subject of re-sale, the re-sale price cannot be controlled by the licensor, for the article would pass from the dominion of the patent. *Ethyl Gasoline Corporation v. United States*, 309 U. S. 436; *Adams v. Burke*, 17 Wall. 453; *Bobbs-Merrill Co. v. Straus*, 210 U. S. 330; *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373; *Bauer & Cie. v. O'Donnell*, 229 U. S. 1; *Straus v. Victor Talking Machine Co.*, 243 U. S. 490; *Boston Store v. American Graphophone Co.*, 246 U. S. 8.

It is on this point that contention arises in respect to the scope of the patents. The defendants take the position that the term "lens" as used in the patents, refers not to the rough blanks but to the completed article usable for the optical purposes by the wearer. For the Government to assert otherwise, as it now does, is to contradict the allegation of its complaint. As there defined, the Government says:

"The term 'lens' \* \* \* wherever used in this com- 1065 plaint, means a lens manufactured of glass to give normal vision to the user thereof, as in all types of spectacles and eyeglasses \* \* \*"

Such definition conforms with the defendants' position. Nor is there proof in the case that without further processing the lens blanks manufactured and sold by the Lens Corporation could be used as lenses. They do not effect normal vision.

A reading of the patents in suit confirms this view. Patent No. 1,632,208 is for a lens. The invention relates to lenses that are to be used with spectacles and the like. The patentees state that in the manufacture of fused lenses a circulate plate of glass of greater refractive index than that of the main lens is fused into the main lens, that it is found that the lower part of the plate is hardly if at all used for reading purposes, and that such lower portion prevents the wearer from seeing the ground. The patentees also observe that the upper portion of the plate is not used in reading. Therefore, it is suggested that a plate of a plurality of pieces of different refractive indices be formed, of which one is to be a reading portion. In this patent it would appear that that which is referred to as the circular plate of glass is a lens blank and not a lens, and that the claims of the patent refer to completed lenses,

The rough lens blank made by the Lens Company would not fall within any of the five claims of this patent.

1066 Patent No. 1,845,940 to Stanley also is entitled an invention for a lens. The term "lens" refers to an article in its finished state for use by the wearer. Of the ten claims there is only one which defines but a segment of the complete lens. Claim 7 covers an article of manufacture for use "as a short distance insert of a crown glass major lens comprising a circular body formed of a central portion of flint glass \* \* \*"; but the article thus defined is not a rough lens blank.

Patent No. 1,876,497 to Hancock is for a trifocal lens. The five claims of the patent all define a lens for use as such and there is nothing in the specification which would narrow the scope to a rough lens blank.

The claims of patent No. 1,879,769 to Silverman cover only a method for producing a lens to eliminate prismatic imbalance.

Patent No. 1,899,777 to Stanley relates to bifocal lenses. The inventor states the objects of his invention are to provide a bifocal lens blank and another to provide a bifocal lens, thus indicating the difference between a lens blank and a lens. After describing the processing of the lens he says:

"the resulting lens of my invention has the very substantial advantage of wide lateral, long distance vision on either side thereof, easy long distance vision above the flat top of the insert, a very deep reading area with sufficient place below this reading area for long distance vision as in walking upstairs, etc."

Thus the fifteen claims of that patent all cover a finished lens.

Patent No. 1,932,100 to Culver relates to improvements in lenses, particularly fused bifocal lenses. The main object of the invention is to provide a new strong, convex or cataract fused, bifocal lens. The eleven claims relate to a finished lens adapted for use as a lens.

Patent No. 2,030,968 to Culver is for an invention relating to ophthalmic lenses. This too is for a finished lens ready for use. The specification describes a method by which the product is patented.

Re-issue patent No. 19,142 to Hancock is of original patent No. 1,876,497, heretofore considered. It defines a finished trifocal lens.

Patent No. 2,163,885 is for a multifocal lens, the two claims of which define a complete lens.

The remaining patents owned or controlled by the defendants, with the exception of one covering a polishing machine, and two for telescopic bifocal lenses which are in no way related to the



subject matter of this cause, relate to methods for making lenses.

1068 Hence it must be concluded that what the Lens Company manufactures and sells to the wholesalers or the finishing retailers is not a lens. Thus the patent monopoly is not exhausted by the manufacturing operations of the Lens Company. The monopoly is not exhausted until the article is complete, according to the terms of the several patents. Moreover, the sale by the wholesaler of its product and of the finishing retailer of its product is not the article in the state of manufacture purchased by them from the Lens Company. Within the patent monopoly these licensees carry on the manufacture of a somewhat "raw" product to a state of completion. Hence what they sell is not a resale of the article purchased from the Lens Company. Such sale does not fall within the ban of those authorities which discountenance resales as being beyond the scope of the patent monopoly.

Nor is the control by the Univis Corporation of the manufacture and sale of the lens blank beyond the monopoly of its patent grants. It would appear that anyone other than a licensee, either making or selling a blank having all of the patented elements in combination, and which has no use except to be converted into a finished lens, would be making an article of manufacture specially designed and intended for the purpose of being ultimately made into the finished eyeglass lens, as covered by claims of the 1069 patents of the Univis Corporation. That would be an act of contributory infringement. *Leeds & Catlin v. Victor Talking Machine*, 213 U. S. 325. The situation is not one in which the patentee seeks to control an unpatented element of a combination and so differs from *Carbice Corporation v. American Patents Developments Corporation*, 283 U. S. 27. Nor does it fall within the condemnation of *Ethyl Gasoline Corporation v. United States* 309 U. S. 436. Here the owner of the patents neither manufactures nor sells a product covered by the patents. The rough lens blank made by the Lens Company as a licensee is not a standard article of commerce. The Univis Corporation, by its system of licenses to initial and final manufacturers, has established its own system of manufacture and seeks the reward of the invention defined in the patents and not in any dissociated element in the patents. Neither *Leitch Mfg. Co. v. Barber Co.*, 302 U. S. 458, cited by the Government, nor *American Lecithin Co. v. Warfield Co.*, 105 F. (2d) 207, is in point.

The license to the wholesaler or distributor recites that the wholesaler or distributor "is desirous of being placed upon the approved list to purchase from the approved manufacturing



licensee of the Univis Corporation rough lens blanks embodying one or more of said inventions \* \* \* and of completing the manufacture thereof according to suitable prescriptions for the use of the purchaser who will wear the resulting 1070 bifocal eyeglass lenses." The license is non-exclusive, non-assignable, and conveys the revocable right "to complete the manufacture of Univis bifocal lenses \* \* \* and to sell the said finished Univis bifocal lenses made from said blanks only in accordance with the terms and conditions set forth herein and as may be established from time to time pursuant to this contract \* \* \*."

The license stipulates that:

"It is further agreed between the parties, as the essence of this contract, that Company (i. e. the licensee) will sell the Univis bifocal eyeglass lenses \* \* \* only to such persons, firms, corporations \* \* \* designated from time to time by the Univis Corporation as being upon an approved list to purchase from the Company (i. e. the licensee) \* \* \* and agree to sell no blanks as blanks except to licensed finishing licensees whose names appear as such on the approved list of the Univis Corporation."

The licensee "agrees to sell Univis bifocal lenses \* \* \* at the present prescription schedule of prices established by the Univis Corporation; and agrees to furnish partly finished Univis lenses \* \* \* at the present finishing licensee schedule of prices established by the Univis Corporation \* \* \*."

This license likewise appears to be within the scope of the patent monopoly. The right to complete the manufacture of an 1071 article falls within the control of dominion of the patents of the Univis Corporation. As has been indicated, up to now there has been no resale violation, and since the holder of a patent may exclude all others from making, using or selling the patented invention, he is likewise free to designate those who may exercise any or all rights conferred by the patent. Thus he may arbitrarily carve his monopoly into as many segments as he elects by giving territorial rights to some, manufacturing rights to others, and the right of use to still others. He may establish his own royalties. He may fix prices at which manufacturing licensees are to sell their products and limit the sale thereof to designated purchasers. See *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436; *United States v. United Shoe Machinery Company*, 247 U. S. 32; *Paper Bag Patent Case*, 210 U. S. 405; *Bement v. National Harrow Co.*, 186 U. S. 70; *Eastern States Retail Lumber Dealers Association v. U. S.*, 234 U. S. 600; *U. S. v. Trans-Missouri Freight Association*, 186 U. S. 290; *Fed-*

eral Trade Commission v. Beech-Nut Co., 257 U. S. 441; U. S. v. General Electric Co., 272 U. S. 476; U. S. v. Colgate & Co., 250 U. S. 300.

Nor does the owner of a patent violate the Sherman Anti-Trust Law by fixing prices in license agreements under which articles may be manufactured and sold by the licensee. U. S. v. General Electric Co., 272 U. S. 476; Bement v. National Harrow Co., 1072 supra; U. S. v. United Shoe Machinery Co., supra; Ethyl Gasoline Co. v. U. S., supra; General Pictures Co. v. Electric Co., 305 U. S. 124; Appalachian Coals, Inc. et al. v. U. S., 288 U. S. 344.

In U. S. v. General Electric Co., 272 U. S. 476, at 491, Mr. Justice Taft, quoting from Bement v. National Harrow Co., said:

"The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts. The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal."

In the same opinion Mr. Justice Taft observes that it has been argued that Bement v. National Harrow Co. has been in effect overruled, and after a consideration of Henry v. Dick Co., 224 U. S. 1; Motion Picture Patents Co. v. Universal Film Co., 243 U. S. 502, and Heaton-Peninsula Button-Fastener Co. v. Eureka Specialty Co., 77 Fed. 288, he says:

"The overruling of the Dick case and the disapproval of the Button-Fastener case by the Motion Picture Film case did not carry with it the overruling of Bement v. Harrow Company. The Button-Fastener case was cited in the case of Bement v. Harrow Company to sustain the decision there by what was an a fortiori argument. The ruling in the former case was much broader than was needed for the decision in the latter. The price  
 1073 at which a patented article sells is certainly a circumstance having a more direct relation, and is more germane to the rights of the patentee, than the unpatented material with which the patented article may be used. Indeed, as already said, price fixing is usually the essence of that which secures proper reward to the patentee."

Thus it must be concluded that price fixing agreements in respect to patented articles or methods, as the Government contends, are not illegal per se. So that up to the time that there is no resale of the patented product, the agreements between licensor and licensee cover a field of valid control. It is only after that point is reached that price fixing, under a patent license system, becomes

unlawful. *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436. Patent control presents a condition which makes such cases as *U. S. v. Socony-Vacuum Oil Co.*, 310 U. S. 150; *U. S. v. American Tobacco Co.*, 221 U. S. 106; *Apex Hosiery Co. v. Leader*, 310 U. S. 469, inapplicable. Moreover the use of the license system to exclude persons from the market because they cut prices is not an abuse of the patent privilege. *U. S. v. Colgate & Co.*, 250 U. S. 300. That right is expressly recognized in the *Ethyl* case and the effort of the Government to find analogy between the factual situation therein and the case at bar must fail. In the former, as Mr. Justice Stone observes, the scene is one "in which appellant has established the marketing of the patented fuel in vast amounts  
1074 on a nation-wide scale, through 11,000 jobbers, and at the same time, by the leverage of its licensing contracts, resting on the fulcrum of its patents, it has built up a combination capable of use and actually used as a means of controlling jobbers' prices and suppressing competition among them."

The Univis Corporation Finishing License contract in essential respects is similar to the Distributor Contract and its legality responds similarly to the same tests. This form of contract is valid as being within the monopoly control of the patents.

The so-called "franchise to prescribe and fit Univis lenses" seeks quite a different form of control. It is a memorandum of agreement made between a "distributor" and one designated as the "representative." The appositeness of the term is not explained.

The "representative" agrees to maintain minimum retail prices to insure high standards of manufacture, use, and sale of the product. The record shows that this "representative" performs no manufacturing operation. He examines his patient or customer and writes a specification which he forwards in the form of a purchase order to the wholesaler or distributor for the manufacture of the completed lenses. He receives a patented article to which  
1075 he has the full legal title. At that point the patent monopoly is exhausted. The owner of the patent, the Univis Corporation, no longer may lawfully control the resale price of that finished article. To contend that the "representative" has to adjust the finished lenses to the nose of the wearer by taking a pair of pliers and manipulating the nose clips or the ear pieces is not to bring such activities of the "representative" within the control of the patent grant. He has added nothing to the patented product. *Ethyl Gasoline Corp. v. U. S.* 309 U. S. 436; *Adams v. Burke*, 17 Wall, 453; *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339; *Dr. Miles Co. v. Park & Sons Co.*, 220 U. S. 373; *Bauer & Cie. v. O'Donnell*, 229 U. S. 1; *Straus v. Victor Talking Machine Co.* 243 U. S. 490; *Boston Store v. American Graphophone Co.*, 246 U. S. 8.

It must be concluded, therefore, that the so-called franchise agreement with the "representative" is illegal and should be stricken down.

Evidence of further attempt to restrain competition in interstate commerce is urged by the Government in the fair trade agreements which the Univis Lens Company makes with the Wholesaler, Finishing Retailer, and Retailer. The defendant's position is that these agreements are within the Miller-Tydings Amendment of August 17, 1930 (C 690, Title VIII, 50 Stat. 693, 15 U. S. C. A. 1) to Sec. 1 of the Sherman Anti-Trust Act. That amendment in part provides:

1076 "That nothing herein contained shall render illegal contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity, and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any state, territory, or the District of Columbia, in which such resale is to be made \* \* \*."

The agreements designate the Lens Company as the "Manufacturer." The Manufacturer is described as engaged in the production and distribution of eyeglass lenses which are distributed and sold under the trade-marks of the Manufacturer "who is the owner thereof" and particularly under the trade-mark "Univis," and which eyeglass lenses are stated to be in fair and open competition with lenses of the same class produced by others.

Further recitals declare that these trade-marks and the shapes of insert in the lenses having a straight top constitute a valuable part of the good will of the business of the Manufacturer, enabling the public to identify the eyeglasses of the Manufacturer and Wholesaler (or of the Manufacturer and Retailer) "as being the product of the scientific research, manufacturing skill, inspection, and standards of workmanship of the Manufacturer and  
1077 Wholesaler" or the Manufacturer and the Retailer as the case may be.

The agreements state that the Wholesaler, the Retailer, and the Finishing Retailer are all engaged in the sale of eyeglass lenses under the trade-mark "Univis," with a straight top insert "as supplied to it by the Manufacturer."<sup>1</sup>

<sup>1</sup> In the agreement with the Finishing Retailer the language is "as supplied to it by the Manufacturer or Wholesaler."



The Wholesaler and the Finishing Retailer agree that they will not offer for sale such eyeglass lenses at less than the minimum resale prices then in effect for such commodities as established hereunder from time to time by the Manufacturer. In the agreement with the Retailer, he too undertakes that he will not offer for sale or sell such eyeglass lenses at less than the minimum resale prices as fixed by the Manufacturer.

There have been offered in evidence two certificates of trade-mark registration to the Lens Company. The first trade-mark, No. 235,817, covers the "Univis" and recites that the mark has been continuously used for ophthalmic lenses and applied to said goods in applicant's business since January 20, 1927. The second trade-mark is for the name "Universal Visibility," certificate No. 250,138, but apparently is not involved herein.

Though the Government has not challenged the ownership of the trade-mark "Univis," a consideration of the record in this 1078 case leads to speculation as to such ownership, for these fair trade agreements designate the Lens Company as the Manufacturer of the lenses. But it will be recalled that the contention of the defendants is that the Lens Company manufactures lens blanks. These two positions are inconsistent. Silverman, to the question "What is the business of the Univis Lens Company?" answered: "It is the manufacturing licensee that manufactures and distributes Univis Lens blanks; the complete multifocal lens blanks."

It is true that to the next question, "But it manufactures and distributes only lens blanks?" he answered: "That would not be entirely accurate. There are a few lenses, special lenses, that are ordered occasionally. That would be 99.9% of its work, but perhaps there is  $\frac{1}{10}$  of 1% that might be finished lenses on special order for certain customers."

In consequence it would seem that the term "Univis" as applied to eyeglass lenses, i. e., the finished lenses, identifies the product of the Wholesaler or Finishing Retailer and that the description of the Lens Company as the "Manufacturer" is not justified by its operations. The manufacturing participation therein by the Lens Company consisted only in furnishing the Wholesaler or the Finishing Retailer with the rough lens blank, and the product which is sold by the Wholesaler and the Finishing Retailer is the article to which the trade-mark applies. As between 1079 the Wholesaler, or the Finishing Retailer, the Lens Company is certainly not the Manufacturer of the lens as defined in the fair trade agreements. A fortiori, the Lens Company is not the Manufacturer of the lens purchased by the Retailer or the Wholesaler.



Certainly so far as the resale by the Retailer is concerned, he sells no commodity which bears, or the container of which bears, the trade-mark "of the producer" of such commodity. What he sells is a commodity of the Distributor or Wholesaler. But the fair trade agreements in evidence in this case are not between the Wholesaler or Distributor and the Retailer, and I can see no applicability of the Miller-Tydings Amendment to the resale activities of the Retailer. This case is not unlike *Mallinson Fabrics Corp. et al. v. R. H. Macy & Co.*, 14 N. Y. S. 2, 203. In that case the New York statute relating to the fair trade agreements was considered. The action was brought by the manufacturer of fabrics sold under the name "Mallinson's Pure Silk Pussy Willow" and by a coplaintiff, a dress manufacturer. The plaintiffs sought to restrain the defendant from advertising or offering for sale or selling dresses under the trade-mark at a price lower than that fixed by the plaintiffs. The defendant's "Pussy Willow" dresses were not made by Mallinson, nor indeed were they those of Siegel. They were made by an unnamed manufacturer. The court observed:

1080 "As I perceive it, this dress is not a 'commodity' produced or owned 'by either plaintiff.'"

The attempt of the Lens Company, under the guise of the protection of the statute, to control the resale of that which it does not manufacture, is ineffectual. For the same reason its "fair Trade" agreements with "Wholesaler" and "Finishing Retailer" are likewise unenforceable. The latter do not resell the product or commodity of the Lens Company.

There is an isolated instance disclosed in the record wherein, in the effort to maintain prices and to exercise an indirect control of optical goods manufactured by others, the defendants departed from the protection of their patents. It appeared that Titmus Optical Company was about to manufacture bifocal lenses alleged to be covered by the claims of the Univis patents. The Univis Corporation notified the Titmus Optical Company that it would be sued for patent infringement. But it also notified its own licensees and by such pressure kept the Titmus Optical Company out of the field by causing directly or indirectly Univis licensees to cancel orders for optical goods theretofore placed by them with the Titmus Company. Johnstone Optical Company, one of the Univis licensees, sent a copy of its telegram of cancellation of a Titmus order to the Univis Lens Company, and from the Univis letter of December 19th in reply, the nature of a concerted  
1081 effort of the defendants can be spelled out. The letter recites:

"DEAR MR. JOHNSTONE: The type of action exemplified by the copy of the telegram received from you is indeed appreciated at

this end. It is, in effect, employing the use of a patent weapon which the better class jobber has to protect his vital interests. I trust that the numerous other jobbers throughout the United States that have expressed their readiness to adopt similar measures will act just as quickly and effectively to the end that a very valuable program will be preserved."

That other Univis licensees expressed their cooperation is shown in the letters of John S. Milam Optical Company of January 8, 1940, of the J. E. Limeburner Co. of January 8, 1940, of the Reese Optical Company, Inc. of January 9, 1940, in the office memorandum relating to the Rooney Optical Company of January 10, 1940; also by the letter of Max Zadek, Inc. of January 10, 1940, and others. Such practices are not countenanced by the patent monopoly and must be regarded as an abuse thereof. It is true that the Titmus case is but an isolated instance and it may be doubted whether the proof is of sufficient weight to justify the conclusion that in and of itself it amounts to a violation of the anti-trust acts.

It must also be observed that there is no proof that the defendants exercise among themselves or by combination with others a control of all bifocal eyeglass lenses. Such lenses are produced by other manufacturers and known under the names "Full-Vue," "Panoptic," "Wide-Sight," "Ultex," and "Kryptok." There is no evidence of an agreement among the manufacturers of these lenses with the defendants to control prices or otherwise. The licensees of the defendants are not required to deal only in Univis products and the record establishes that the percentage of Univis bifocal lenses sold by the Univis licensees, as compared to other bifocal lenses sold by them, is only between five and six percent. Moreover the Univis Corporation has licensed only about fifty percent of the trade. Apparently then the defendants control but two and a half percent of the total volume of business done in bifocal eyeglass lenses. On its face such a small percent would not seem to be an unreasonable restraint of trade. *Standard Oil Co. v. United States*, 283 U. S. 163.

Yet the Government, relying on *United States v. Socony Vacuum Oil Co.*, 310 U. S. 150; *Apex Hosiery v. Leader*, 310 U. S. 469; *Montague & Co. v. Lowry*, 193 U. S. 38; *O'Brien v. United States*, 290 Fed. 185 (C. C. A. 6, 1923); *Vandell v. United States*, 6 F. (2d) 188 (C. C. A. 2, 1925); *Hicks v. Bekins Moving & Storage Co.*, 87 F. (2d) 583 (C. C. A. 9, 1937); *Buyer v. Guillan*, 271 Fed. 65 (C. C. A. 2, 1921); *United States v. International Fur Workers Union*, 100 F. (2d) 541 (C. C. A. 2, 1938); *Oxford Varnish Corporation v. Ault & Wiberg Corporation*, 83 F. (2d)

1083 764 (C. C. A. 6, 1936), contends that any tampering with prices, even though the members of the price fixing group are in no position to control the market—to the extent that they raise, lower or stabilize prices, nevertheless directly interferes with the free play of market forces. The distinction between Standard Oil Company v. United States, 283 U. S. 163, and the foregoing group of cases, is that the former case turned on the validity of patent pooling agreements and whether they created monopoly; whereas in the cases cited by the Government no patent situation was involved.

But in the Standard Oil case, the court held the patent pooling and licensing legal; whereas, as has been indicated hereinbefore, the following criticisms must be made of defendants' practices in attempting to extend their control of prices beyond the monopoly of their patents:

1. The prescription license is not lawful.
2. The fair trade agreements are not lawful.
3. The concerted effort of defendants and their licensees to interfere with the business of the Titmus Optical Company is not within the patent control.

Do such violations of law constitute unreasonable restraint of interstate trade and commerce in violation of Secs. 1 and 3 of the Sherman Anti-Trust Act? It is at this point that United States v. Socony Vacuum Oil Co., 310 U. S. 150 and related cases are wholly pertinent, for the two defendant corporations have at 1084 tempted to establish a monopoly in the sale of Univis bifocal lenses beyond the patent control and should be restrained. The Government is entitled to a decree, limited, however, to the extent hereinbefore indicated of declaring invalid the prescription license and unfair trade-mark agreements and restraining the defendants from the exercise of such activities as were proved in the Titmus Optical Company matter.

Submit findings of fact and conclusions of law in conformity with the foregoing opinion.

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U. S. D. J.

In the United States District Court  
For the Southern District of New York

Civil Action No. 10-392

UNITED STATES OF AMERICA, PLAINTIFF,

v.

THE UNIVIS LENS COMPANY, INC., ET AL., DEFENDANTS

*Findings of fact and conclusions of law submitted on behalf of  
the defendants in accordance with the opinion of the Court  
dated September 17, 1941.*

Filed Nov. 25, 1941

Pursuant to Rule 52 (a) of the Rules of Civil Procedure, the Court specially states the following as its Findings of Fact and Conclusions of Law:

*Findings of fact*

I. This is an action brought by the United States of America instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies," said Act being commonly known as the Sherman  
1086 Anti-Trust Act, the particular sections of said Act alleged to be violated by the defendants being Sections 1 and 3 thereof.

II. The Univis Corporation is the owner of certain United States Letters Patent covering bifocal and trifocal lenses manufactured out of glass of different refractive indices to give normal vision to the user. Nearly all of these patents in their various claims cover the finished and completed lens and all steps and elements in the making of the finished and completed lenses from the forming of the rough blank through to the completed, finished lens. One or more of the patents cover the process of making the blanks and the lenses. The Government concedes the validity of the patents as well as the title thereto in the Univis Corporation.

III. The defendants admit that the Lens Company and the Univis Corporation to all intents and purposes are the same and that the individual defendants have owned or control both corporations. The Univis Corporation has consistently followed an "open end" license policy by which all licensees of the same class are charged the same license fee and have the same prices fixed for performing the same manufacturing service; and that



the licenses are open to all qualified licensees. The basis of its policy is the maintenance of highest standards of quality, service and performance by each licensee at each stage of the manufacturing process. Such policy is founded upon the peculiar nature of the business of manufacturing, prescribing, fitting, and distributing eyeglass lenses in a series of successive steps, by different types of manufacturing establishments at different distances from the customer. The "blanks" are manufactured by the Lens Company out of blocks of glass in which the near vision inserts are fused to form the same fabricated product from which the bifocal lenses are ultimately to be made; also that the lens blank, at such stage of manufacture, is not useful as an eyeglass lens and must be subjected to manufacturing processes by other licensees and finally fitted to the eyes of the wearer through a suitable examination of the eyes, both for prescription and design purposes. As a matter of practice the retailer licensee who is in direct contact with the customer determines the shape, the centering and the positioning thereof on the face of the wearer and the mounting of the lens in a frame in order to give the maximum vision and comfort to the wearer. The prescription and design instructions for grinding is forwarded to a wholesaler to whom the lens blank has been sold by the Lens Company. The lenses when completed are then in turn delivered to the finishing retailer who adjusts and fits them to the eyes of the wearer to see that they comply with the prescription and design instructions resulting from the examination of the wearer by the licensee.

The wholesaler purchases the manufactured rough Univis blank generally for \$3.25. The process practiced by the wholesaler in following the prescription received from an optometrist, dispenser or ophthalmologist entails great accuracy and requires from three and a half to four hours for each pair of lenses. The wholesaler receives an average gross profit of approximately \$3.70 for a pair of lenses. The total average margin of gross profit for the retailer is stated to be about \$9.00 per pair of lenses.

IV. The Lens Company manufactures bifocal blanks under license from the Univis Corporation. The Univis Corporation receives on all lenses manufactured in the United States and sold in the United States by the Lens Company a royalty of \$0.50 per pair to be paid by the Lens Company to the Univis Corporation. The Lens Company sells blanks to none other than those appearing from time to time on an approved list of finishing and prescription purchasers submitted by the Univis Corporation.

A blank is a rough piece of glass or a partly manufactured piece of glass. As manufactured and distributed by the Lens Com-



pany the lens blank consists of reading and distance segments; and in the case of trifocal lenses a reading segment, distance segment, and an intermediate segment. The great bulk of the business done in the manufacture and distribution of the lens blanks by the Lens Company is of the bifocal character. The Lens Company sells these lens blanks to licensed distributors known as wholesalers; also to grinding finishing licensees and to dispensing opticians who have complete grinding laboratories. The Lens  
1089 Company has two types of customers—wholesalers and retailers. The lens blank sold by the Lens Company to either wholesalers or retailers could be used for no other purpose than as a lens blank to be made into a finished optical bifocal lens. The Lens Company employs service men to educate the lens grinders employed by the licensees, for these Univis lens blanks are computed on a series of corrective curves, i. e., a series of curves for each individual prescription to the end that the widest angle of vision may be obtained by the consumer. Such curves have been the subject of computation by the technical department of the Lens Company, are charted, and the chart discloses the curve to be found on every prescription. In addition special tools are furnished to the wholesaler or finishing retailer.

V. A finishing retailer has a complete grinding and finishing laboratory comparable to that of the wholesaler and performs the same functions, the same grinding and finishing operations, as does a wholesaler and supplies the lenses through the stages of fitting and designing directly to the public.

A prescription retailer, if he is an optometrist, examines the patient's eyes, prescribes the lens, designs the size, the shape, and contour thereof to conform with the patient's peculiar facial characteristics; designs the size, heights, and positioning of the reading segment to conform to the patient's particular voca-  
1090 tion or other personal requirements. These specifications he forwards to a laboratory for completion. On receipt of the completed lenses from the laboratory he fits the lenses to the patient's face.

The Lens Company sells blanks to such designated purchasers as have been licensed by the Univis Corporation to complete the manufacturing under the patents, i. e., to convert the lens blank into a lens.

VI. The term "lens," as used in the patents, refers not to the rough blanks but to the completed article usable for optical purposes by the wearer. The Government so defines a lens in its complaint:

"The term 'lens,' \* \* \* wherever used in this complaint, means a lens manufactured of glass to give normal vision to the user thereof, as in all types of spectacles and eyeglasses \* \* \*."

Such definition conforms with the defendant's position. Nor is there proof in the case that without further processing the lens blanks manufactured and sold by the Lens Corporation could be used as lenses. They do not effect normal vision.

The patents cover the finished lens. Patent No. 1,632,208 is for a lens. The invention relates to lenses that are to be used with spectacles and the like. The Patentees state that in the manufacture of fused lenses a circular plate of glass of greater refractive index than that of the main lens is fused into the main lens, that it is found that the lower part of the plate is hardly if at all used for reading purposes, and that such lower portion prevents the wearer from seeing the ground. The patentees also observe that the upper portion of the plate is not used in reading. Therefore, it is suggested that a plate of a plurality of pieces of different refractive indices be formed, of which one is to be a reading portion. In this patent it would appear that that which is referred to as the circular plate of glass is a lens blank and not a lens, and that the claims of the patent refer to completed lenses. The rough lens blank made by the Lens Company would not fall within any of the five claims of this patent.

VII. Patent No. 1,845,940 to Stanley also is entitled an invention for a lens. The term "lens" refers to an article in its finished state for use by the wearer. Of the ten claims there is only one which defines but a segment of the complete lens. Claim 7 covers an article of manufacture for use "as a short distance insert of a crown glass major lens comprising a circular body formed of a central portion of flint glass \* \* \*"; but the article thus defined is not a rough lens blank.

Patent No. 1,876,497 to Hancock is for a trifocal lens. The five claims of the patent all define a lens for use as such and there is nothing in the specification which would narrow the scope to a rough lens blank.

The claims of patent No. 1,879,769 to Silverman cover only a method for producing a lens to eliminate prismatic imbalance.

Patent No. 1,899,777 to Stanley relates to bifocal lenses.

The inventor states the objects of his invention are to provide a bifocal lens blank and another to provide a bifocal lens, thus indicating the difference between a lens blank and a lens. After describing the processing of the lens he says:

"The resulting lens of my invention has the very substantial advantage of wide lateral, long distance vision on either side thereof, easy long distance vision above the flat top of the insert, a very deep reading area with sufficient place below this reading area for long distance vision as in walking upstairs, etc."

Thus the fifteen claims of that patent all cover a finished lens.

Patent No. 1,932,100 to Culver relates to improvements in lenses, particularly fused bifocal lenses. The main object of the invention is to provide a new, strong, convex or cataract fused, bifocal lens. The eleven claims relate to a finished lens adapted for use as a lens.

Patent No. 2,030,968 to Culver is for an invention relating to ophthalmic lenses. This too is for a finished lens ready for use. The specification describes a method by which the product is patented.

Reissue patent No. 19,142 to Hancock is of original patent No. 1,876,497, heretofore considered. It defines a finished trifocal lens.

Patent No. 2,183,885 is for a multifocal lens, the two claims of which define a complete lens.

1093 The remaining patents owned or controlled by the defendants, with the exception of one covering a polishing machine, and two for telescopic bifocal lenses which are in no way related to the subject matter of this cause, relate to methods for making lenses.

VIII. What the Lens Company manufactures and sells to the wholesalers or the finishing retailers is not a lens. Thus the patent monopoly is not exhausted by the manufacturing operations of the Lens Company. The monopoly is not exhausted until the article is complete, according to the terms of the several patents. Moreover, the sale by the wholesaler of its product and of the finishing retailer of its product is not the article in the state of manufacture purchased by them from the Lens Company. Within the patent monopoly these licensees carry on the manufacture of a somewhat "raw" product to a state of completion. Hence what they sell is not a resale of the article purchased from the Lens Company. Such sale does not fall within the ban of those authorities which discountenance resales as being beyond the scope of the patent monopoly.

IX. The defendants' license to prescription licensees contains a provision to maintain minimum retail prices to insure high standards of manufacture, use and sale of the product. This licensee is known as a "representative" in the trade. The prescription licensee may be either an optometrist, oculist or eye physician or an optician who either refracts to write a prescription and designs or designs only and orders lenses so ground by a wholesaler. In 1094 some instances prescription licensee does edging, drilling, and mounting of the lenses. His patient either brings a prescription to him for glasses prescribed by an ophthalmologist or the "representative" may refract the patient's eyes and write the prescription himself. In either event he also examines the patient and writes out a specification or "design" instructions which he

forwards with the prescription to a lens grinder who is a licensed wholesaler or finishing licensee who manufactures the completed lenses from blanks in his possession. These "design" instructions adapt the prescription glasses to the special eye conditions of the patient such as the size, shape, contour of the lens to conform with the patient's peculiar facial characteristics; and the prescription licensee designs the size, heights and positioning of the reading segment to conform to the patient's particular vocation and other personal habits and he has computed the angle of the lenses to give that vision, because while many prescriptions may be alike all "design" instructions are substantially different due to the differences in individuals who may have the same eye defects to be cured by the prescription. The representative, optometrist, or his equivalent who is licensed, has his order filled and the lenses are delivered to him. He then again fits and adjusts as well as tests the lenses to see whether they are in accordance with the prescription and design instructions and also whether they actually fit and satisfy the patient. It is not until all of this work on the lenses is completed that the final sale of completed lenses is made to the ultimate user.

X. The Univis Lens Company has Fair Trade Agreements with the Wholesaler, Finishing Retailer, and Retailer and claims that these agreements are within the Miller-Tydings Amendment of August 17, 1930 (C 690 Title VIII, 50 Stat. 693, 15 U. S. 1095 C. A. 1) to Sec. 1 of the Sherman Anti-Trust Act. That amendment in part provides:

"That nothing herein contained shall render illegal contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand or name of the producer or distributor of such commodity, and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any state, territory, or the District of Columbia, in which such resale is to be made \* \* \*"

The agreements designate the Lens Company as the "Manufacturer." The Manufacturer is described as engaged in the production and distribution of eyeglass lenses which are distributed and sold under the trade-marks of the Manufacturer "who is the owner thereof" and particularly under the trade-mark "Univis," and which eyeglass lenses are stated to be in fair and open competition with lenses of the same class produced by others.

Further recitals declare that these trade-marks and the shapes of insert in the lenses having a straight top constitute a valuable



part of the good will of the business of the Manufacturer, enabling the public to identify the eyeglasses of the Manufacturer and Wholesaler (or of the Manufacturer and Retailer) "as being the product of the scientific research, manufacturing skill, inspection, and standards of workmanship of the Manufacturer and Wholesaler" or the Manufacturer and the Retailer as the case may be.

The agreements state that the Wholesaler, the Retailer and the Finishing Retailer are all engaged in the sale of eyeglass lenses under the trade-mark "Univis" with a straight top insert "as supplied to it by the manufacturer."<sup>1</sup>

The Wholesaler and the Finishing Retailer agree that they will not offer for sale such eyeglass lenses at less than the minimum resale prices then in effect for such commodities as established hereunder from time to time by the Manufacturer. In the agreement with the Retailer, he too undertakes that he will not offer for sale or sell such eyeglass lenses at less than the minimum resale prices as fixed by the Manufacturer.

There have been offered in evidence two certificates of trade-mark registration to the Lens Company. The first trade-mark, No. 235,817, covers the "Univis" and recites that the mark has been continuously used for ophthalmic lenses and applied to said goods in applicant's business since January 20, 1927. The second trade-mark is for the name "Universal Visibility," certificate No. 250,138, but apparently is not involved herein.

The Government has not challenged the ownership of the trade-mark "Univis."

1097 XI. As The Univis Lens Company is only the manufacturer of the blanks, except in a small percentage of cases, I find that it is not a manufacturer of the finished lenses. The retailer sells no commodity which bears, or the container which bears, the trade-mark of the "Producer" of such finished lenses although he does sell finished lenses made from blanks of the producer and he does sell such finished lenses under the trade-mark "Univis" owned by The Univis Lens Company, the producer of the blanks. The Fair Trade Agreements are not between the wholesaler distributor and the retailer.

XII. Titmus Optical Company was about to manufacture bifocal lenses alleged to be covered by the claims of the Univis patents. The Univis Corporation notified the Titmus Optical Company that it would be sued for patent infringement. But it also notified its own licensees under its patents of the threatened action against the Titmus Company. The Univis licensees can-

<sup>1</sup> In the agreement with the Finishing Retailer the language is "as supplied to it by the Manufacturer or Wholesaler."



celed orders for optical goods theretofore placed by them with the Titmus Company. Johnstone Optical Company, one of the Univis licensees, sent a copy of its telegram of cancellation of a Titmus order to the Univis Lens Company. The Univis Company on December 19th replied:

"DEAR MR. JOHNSTONE: The type of action exemplified by the copy of the telegram received from you is indeed appreciated at this end. It is, in effect, employing the use of a patent weapon which the better class jobber has to protect his vital interests. I trust that the numerous other jobbers throughout the United States that have expressed their readiness to adopt similar measures will act just as quickly and effectively to the end that a very valuable program will be preserved."

1098 Other Univis licensees expressed their cooperation in the letters of John S. Milan Optical Company of January 8, 1940, of the J. E. Limeburner Co., of January 8, 1940, of the Reese Optical Company, Inc., of January 9, 1940, in the office memorandum relating to the Rooney Optical Company of January 10, 1940; also by the letter of Max Zadek, Inc., of January 10, 1940, and others.

XIII. There is no proof that the defendants exercise among themselves or by combination with others a control of all bifocal eyeglass lenses. Such lenses are produced by other manufacturers and known under the names "Full-Vue," "Panoptic," "Wide-Sight," "Ultex," and "Kryptok." There is no evidence of an agreement among the manufacturers of these lenses with the defendants to control prices or otherwise. The licensees of the defendants are not required to deal only in Univis products and the record establishes that the percentage of Univis bifocal lenses sold by the Univis licensees, as compared to other bifocal lenses sold by them, is only between five and six percent. Moreover, the Univis Corporation has licensed only about fifty percent of the trade. Apparently then the defendants control but two and a half percent of the total volume of business done in bifocal eyeglass lenses. On its face such a small percent would not seem to be an unreasonable restraint of trade. *Standard Oil Co. v. United States*, 283 U. S. 163, but on the other hand, the defendants control one hundred percent (100%) of the volume of business done in "Univis" lenses.

The Univis Lens Company manufactures Univis bifocal 1099 lens blanks and sells them in interstate commerce to wholesalers and finishing retailer licensees of the Univis Corporation, located in the several states of the United States and in the District of Columbia. The Univis Corporation has licensed prescription retailers in many states of the United States and in the District of Columbia. These prescription licensees pur-

chase finished Univis lenses in accordance with their licenses from wholesaler licensees and both of these classes of licensees are engaged in interstate commerce.

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*Conclusions of law.*

I. The Court has jurisdiction of this cause under the Act of July 2, 1890, as amended entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

II. The patents owned and controlled by The Univis Corporation numbered 1,632,208; 1,845,940; 1,876,497; 1,879,769; 1,899,777; 1,932,100; 2,030,968; 2,183,835; and Reissue patent No. 19,142 cover in their various claims a finished multifocal "lens" suitable for use in eyeglasses or spectacles and insofar as this proceeding is concerned, are valid in law; and said patents disclose the uncompleted multifocal lens blanks manufactured and sold by The Univis Lens Company as a part of the stage of manufacture of the completed "lens." The remaining patents set up by the defendants in their answer are owned or controlled by The Univis Corporation and are also, for the purpose of these proceedings, valid in law. With the exception of one covering a polishing machine and two for telescopic bifocal lenses, that are in no way related to the subject matter of this case, but cover and relate to the process or method for manufacturing lens blanks.

III. The license agreement between The Univis Corporation and The Univis Lens Company, Inc., is a valid patent license contract in law.

1101 IV. The Univis Corporation as the owner of patents has the legal right to license The Univis Lens Company under its patents and the provisions of the license contract between The Univis Corporation and The Univis Lens Company, Inc. requiring The Univis Lens Company, Inc. to sell multifocal lens blanks only to purchasers approved and licensed by The Univis Corporation and at prices fixed by The Univis Corporation are within the monopoly of the patents owned and controlled by The Univis Corporation, are valid in law, and do not constitute any violation of The Act of July 2, 1890 as amended.

V. The control by The Univis Corporation of the manufacture and sale of the lens blanks under its licensing system is lawful and valid and not beyond the monopoly of its patent grants and not any violation of the Act of July 2, 1890 as amended, as alleged in the Bill of Complaint herein.

VI. The Univis Lens Company, Inc. in manufacturing and selling multifocal lens blanks only to the other licensees of The Univis Corporation and at prices fixed by The Univis Corporation has not violated section 1 or 3 of the Act of July 2, 1890 as

amended and the Bill of Complaint as to said license contract between The Univis Corporation and The Univis Lens Company, Inc. has not been sustained and should be dismissed.

1102 VII. The license contracts between The Univis Corporation and the wholesale distributor licensees and finishing licensees are within the monopoly grant of the patents of The Univis Corporation and valid in law and do not constitute any violation of the Act of July 2, 1890 as amended.

VIII. The plaintiff has failed to make out any case under its Bill of Complaint as to said license contracts between The Univis Corporation and the wholesale distributor licensees and as to said license contracts the Bill of Complaint should be dismissed.

IX. The licensed wholesale distributors and the retail grinding finishing licensees, in processing and completing lens blanks into a finished lens, engage in the manufacture of a patented article, i. e., the finished and completed lens, within the grant of the patents owned or controlled by The Univis Corporation. The license contracts between The Univis Corporation and the retail grinding licensees with their restrictions as to purchases from said grinding retail licensees and the fixing of prices by The Univis Corporation are within the monopoly grant of the patents of The Univis Corporation, are valid in law and do not constitute any violation of the Act of July 2, 1890 as amended.

X. The plaintiff has failed to make out any case under its Bill of Complaint as to said license contracts between the Univis Corporation and the retail or finishing grinding licensees, and as to said license contracts the Bill of Complaint should be dismissed.

XI. The nongrinding prescription and fitting retail licensees purchase an article which passes outside the monopoly of the patents of The Univis Corporation by the sale to said nongrinding prescription and fitting licensee.

XII. The design, prescription work when done, and resulting adjustments and fitting made by the nongrinding prescription and fitting retail licensee who has purchased finished lenses from the wholesale distributor or grinding retail licensee do not constitute any manufacture within the grant of the patents owned by the Univis Corporation.

XIII. The license contracts between The Univis Corporation and the nongrinding prescription and fitting retail licensees fixing the minimum prices below which said nongrinding prescription and fitting retailer cannot sell the finished lenses, and designating the customers to whom the finished lenses may be resold, and otherwise controlling the activities of these nongrinding prescription and fitting retail licensees are contracts beyond the grant of the

monopoly of the patents owned or controlled by The Univis Corporation and constitute a violation of the defendants of sections 1 and 3 of the Act of July 2, 1890 as amended.

XIV. As The Univis Lens Company is primarily a manufacturer of blanks which is not a finished lens, the Fair Trade Agreements between it, the wholesalers, the finishing grinders and the retail representatives under the trade-mark "Univis" are not within the provisions of the Miller-Tydings Amendment of the Act of July 2, 1890 and are invalid in law as a consequence.

XVI. The Fair Trade Agreements between The Univis Lens Company, Inc., and its customers constitute a violation of sections 1 and 3 of the Act of July 2, 1890 as amended, and the Bill of Complaint as to these Fair Trade Agreements should be sustained.

XVII. In the instance of the Titmus Optical Company the defendants have violated sections 1 and 3 of the Act of July 2, 1890 and the Bill of Complaint in this respect should be sustained as to this single instance.

XVIII. The plaintiff is not entitled to any injunction or other remedy as against the defendants with regard to the license contract between The Univis Corporation and The Univis Lens Company, Inc.

XIX. The plaintiff is not entitled to an injunction or any other remedy with regard to the license contracts between The Univis Corporation and the wholesale distributor licensees.

1105 XX. The plaintiff is not entitled to an injunction or any other remedy with regard to the license contracts between The Univis Corporation and the grinding retail licensees.

XXI. The plaintiff is entitled to an injunction restraining the defendants from enforcing or attempting to enforce any provisions of the licensing contracts between The Univis Corporation and the nongrinding prescription and fitting retail licensees.

XXII. The plaintiff is entitled to an injunction restraining the defendants from enforcing or attempting to enforce any provisions of the fair trade contracts or agreements executed between The Univis Lens Company and optical wholesalers and optical retailers, both finishing retailers and prescription retailers, said injunction, however, not to affect the licenses and rights thereunder between The Univis Corporation and the wholesale distributor licensees or between The Univis Corporation and the grinding and finishing retail licensees.

XXIII. The plaintiff is entitled to an injunction restraining the defendants from entering into any combination or conspiracy of agreement among themselves or with the licensees to prevent by threats of or by cancellation of orders or any other



means any person or company from manufacturing and selling multifocal lenses or multifocal lens blanks, except that defendants are entitled to use their patents to protect their manufacture, use, and sale of the subject matter thereof as provided 1106 by law through actions for patent infringement against infringers.

XXIV. The Lens Company has the right to manufacture lens blanks and to sell them as restricted by the Univis Company only to those who are either licensed wholesalers or licensed retailers. The owner of a patent has the right to license another to make and sell the patented article only to purchasers approved or designated by the licensor.

XXV. If the thing sold by the Lens Company is the patented article and that article becomes the subject of resale, the resale price cannot be controlled by the licensor, for the article would pass from the dominion of the patent.

XXVI. The control by the Univis Corporation of the manufacture and sale of the lens blank does not go beyond the monopoly of its patent grants. Anyone other than a licensee, either making or selling a blank having all of the patented elements in combination, and which has no use except to be con- 1107 verted into a finished lens, would be making an article of manufacture specially designed and intended for the purpose of being ultimately made into the finished eyeglass lens, as covered by claims of the patents of the Univis Corporation. That would be an act of contributory infringement. The situation is not one in which the patentee seeks to control an unpatented element of a combination. Nor does it fall within the condemnation of Ethyl Gasoline Corporation v. United States, 309 U. S. 436. Here the owner of the patents neither manufactures nor sells a product covered by the patents. The rough lens blank made by the Lens Company as a licensee is not a standard article of commerce. The Univis Corporation, by its system of licenses to initial and final manufacturers, has established its own system of manufacture and seeks the reward of the invention defined in the patents and not in any dissociated element in the patents.

XXVII. The license to the wholesaler or distributor recites that the wholesaler or distributor "is desirous of being placed upon the approved list to purchase from the approved manufacturing licensee of the Univis Corporation rough lens blanks embodying one or more of said inventions \* \* \* and of completing the manufacture thereof according to suitable prescriptions 1108 for the use of the purchaser who will wear the resulting bifocal eyeglass lenses." The license is nonexclusive, non-assignable, and conveys the revocable right "to complete the manufacture of Univis bifocal lenses \* \* \* and to sell the



said finished Univis bifocal lenses made from said blanks only in accordance with the terms and conditions set forth herein and as may be established from time to time pursuant to this contract \* \* \*

The license stipulates that:

"It is further agreed between the parties, as the essence of this contract, that ----- Company (i. e. the licensee) will sell the Univis bifocal eyeglass lenses \* \* \* only to such persons, firms, corporations \* \* \* designated from time to time by the Univis Corporation as being upon an approved list to purchase from the ----- Company (i. e. the licensee) \* \* \* and agree to sell no blanks as blanks except to licensed finishing licensees whose names appear as such on the approved list of the Univis Corporation."

The licensee "agrees to sell Univis bifocal lenses \* \* \* at the present prescription schedule of prices established by the Univis Corporation; and agrees to furnish partly finished Univis lenses \* \* \* at the present finishing licensee schedule of prices established by the Univis Corporation \* \* \*."

This license likewise appears to be within the scope of the patent monopoly. The right to complete the manufacture of an article falls within the control of dominion of the patents of the Univis Corporation. In following this procedure there has been no resale violation, and since the holder of a patent may exclude all others from making, using or selling the patented invention, he is likewise free to designate those who may exercise any or all rights conferred by the patent. Thus he may arbitrarily carve his monopoly into as many segments as he elects by giving territorial rights to some, manufacturing rights to others, and the right of use to still others. He may establish his own royalties. He may fix prices at which manufacturing licensees are to sell their products and limit the sale thereof to designated purchasers.

XXVIII. The owner of a patent does not violate the Sherman Anti-Trust Law by fixing prices in license agreements under which articles may be manufactured and sold by the licensee.

XXIX. Defendants' price fixing agreements in respect to its patented articles or methods are not illegal per se. So that up to the time that there is no resale of the patented product, the agreements between licensor and licensee cover a field of valid control. It is only after that point is reached that price fixing, under a patent license system, becomes unlawful. Moreover the use of the license system to exclude persons from the market because they cut prices is not an abuse of the patent privilege.

(S) CLARENCE G. GALSTON,  
United States District Judge.

1110 In United States District Court for the Southern  
District of New York

Civil Action No. 10-392

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS COMPANY, INC., ET AL., DEFENDANTS

*Final Decree*

Filed Nov. 25, 1941

This cause having come on for hearing before this Court upon the pleadings and upon the testimony, both oral and documentary, introduced at the trial of this cause, and the same having been argued by counsel both orally and upon briefs submitted, and the Court having filed its opinion herein on September 17, 1941, and having likewise made and filed its Findings of Fact and Conclusions of Law dated the 25th day of November, 1941:

It is hereby ordered, adjudged, and decreed as follows:

(1) That the defendants, The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley, have not violated Section 1 or Section 3 of an Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," as amended, in any way with respect to the license contracts entered into between The Univis Corporation and wholesale distributor licensees or grinding and finishing retail licensees and the Bill of Complaint as to said license contracts be and the same hereby is dismissed.

(2) That the defendants, The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley, have entered into contracts and agreements which violate Section 1 and Section 3 of an Act 1111 of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," as amended, by the said Univis Corporation entering into license agreements with nongrinding prescription and fitting optical retailers, which fix the price at which said retailers shall sell Univis multifocal lenses and otherwise control the activities of said nongrinding prescription and fitting retail licensees, and the Bill of Complaint as to said license contracts should be and the same hereby is sustained.

(3) That the provisions of each license agreement now in effect between the defendant The Univis Corporation and its nongrind-

ing prescription and fitting optical retail licensees which prohibit or purport to prohibit the said licensees from selling Univis multifocal lenses to any purchaser except those designated by the defendants or any one of them, or which purport to fix a minimum price for Univis multifocal lenses or which otherwise control the activities of said nongrinding prescription and fitting retailers are illegal, null and void, and that the defendant The Univis Corporation shall forthwith cancel said contracts and give notice within sixty days from the date of this decree to each such nongrinding prescription and fitting retail licensee that said contract has been canceled and is not in effect.

(4) That the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be and they hereby are perpetually enjoined and restrained:

(a) From enforcing or attempting to enforce any provision in a license contract or any agreement between the defendant The Univis Corporation or between any other defendant and any nongrinding prescription and fitting optical retailer which prohibits or purports to prohibit the said retailer from selling Univis multifocal lenses to any purchaser except the purchasers designated by the defendant corporations or by the individual defendants or which fixes or purports to fix the price at which said nongrinding prescription and fitting retailer shall sell Univis multifocal lenses or which otherwise controls the activities of said nongrinding prescription and fitting retailers;

(b) From including in or enforcing any future contract or agreement with any nongrinding prescription and fitting optical retailer any provision which prohibits or purports to prohibit said nongrinding prescription and fitting retailer from selling Univis multifocal lenses to any purchaser except the purchasers designated by the defendant corporations or the individual defendants or which fixes the price to be charged by the said nongrinding prescription and fitting retailer in the sale of Univis multifocal lenses or which otherwise controls the activities of said nongrinding prescription and fitting retailer.

(5) That the defendants, The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley, by entering into fair trade agreements and contracts in addition to the license contracts of The Univis Corporation, have violated Section 1 and Section 3 of an Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" by undertaking to establish retail price maintenance as to multifocal lenses which fix the minimum sales prices for Univis multifocal lenses, and the Bill of Complaint as to said fair trade resale

price maintenance contracts should be and the same hereby is sustained.

(6) That all fair trade resale price maintenance contracts under the trademarks of The Univis Lens Company now outstanding which purport to fix the minimum resale price for Univis multifocal lenses under the trademarks of The Univis Lens Company or which purport to designate or which designate the customers to whom Univis multifocal lenses shall be sold or which otherwise control the activities of wholesalers or retailers are illegal, null, and void, and that the said defendant The Univis Lens Company shall forthwith cancel said fair trade resale price maintenance contracts and give due notice within sixty days from the date of this decree as to each such wholesaler and retailer that said fair trade resale price contract with each such wholesaler or retailer has been canceled and is of no effect, together with a true copy of this decree, but said cancellation of said fair trade resale price maintenance contracts shall not affect any of the provisions of the license contracts between The Univis Corporation and any such wholesale distributor licensee or grinding and finishing retail licensee.

(7) That the defendant corporations and their officers, agents, representatives and employees and each individual defendant be and they hereby are perpetually enjoined and restrained:

(a) From enforcing or attempting to enforce any fair trade resale price maintenance contract between the defendant The Univis Lens Company under its trademarks and any optical wholesaler or any optical retailer which prohibits or purports to prohibit said wholesaler or retailer from selling Univis multifocal lenses to any customer or purchaser except those designated by the defendant The Univis Lens Company or which fixes or attempts to fix the minimum price to be charged by said wholesaler or retailer in the sale of Univis multifocal lenses or which otherwise controls the activities of said wholesaler or retailer, but said injunction shall have no effect or in any way relate to the provisions of the license contracts between The Univis Corporation and said wholesale distributors or grinding retail licensees.

(8) That the defendants, The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley, have violated Sections 1 and 3 of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," by combining and conspiring among themselves to prevent and by preventing the Titmus Optical Company from manufacturing and distributing multifocal lenses or



multifocal lens blanks and by combining and conspiring with licensed Univis wholesalers and licensed finishing retailers to prevent and by preventing the Titmus Optical Company from manufacturing and distributing multifocal lenses and multifocal lens blanks.

(9) That the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be and they hereby are perpetually enjoined and restrained:

(a) From entering into any combination, agreement, or conspiracy among themselves to prevent the Titmus Optical Company or any other person or company from manufacturing and distributing multifocal lenses and multifocal lens blanks by threats of or refusing to purchase, by inducing others to refuse to purchase, or by compelling purchasers not to deal with such person or company;

(b) From entering into any combination, agreement, or conspiracy with optical wholesalers or optical retailers to exert pressure by threats of cancellation of orders, by cancellation of orders, or by inducing others to cancel orders upon the Titmus Optical Company or any other person or company in order to prevent said Titmus Optical Company or other person or company from manufacturing and selling multifocal lenses or multifocal lens blanks.

(10) It is further adjudged and decreed that nothing herein shall prevent the defendants from continuing their activities in connection with the licenses to optical wholesalers and finishing retailers pursuant to the Opinion of the Court and nothing herein shall prevent the defendants from proceeding with litigation under their patents in accordance with the patent laws of the United States.

1115 (11) That jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders and decrees as may be necessary or appropriate for the construction or carrying out of this decree, for modification or termination of any of the provisions thereof, for the enforcement or compliance therewith and for the punishment of violations thereof.

(12) That the costs of this action to be taxed shall be divided equally between the parties hereto.

(13) The injunction provided for hereinabove and all executory action under this decree shall not become effective or operative until sixty days from the date of the entry of this decree and in the event an appeal is prosecuted all injunctive and executory actions provided for herein shall be stayed and suspended pending



the final disposition of such appeal, conditioned upon the defendants entering into an appeal bond in the amount of Two Hundred Fifty Dollars (\$250.00).

(S) CLARENCE G. GALSTON,  
*United States District Judge.*

Dated this 25th day of November 1941.

1116 In District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Petition for appeal*

To the Honorable CLARENCE G. GALSTON, *Judge of the District Court of the United States for the Southern District of New York:*

The United States of America, plaintiff in the above-entitled cause, considering it is aggrieved by the final order and decree of this Court entered on the 25th day of November 1941, does hereby pray an appeal from said final order and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the Assignment of Errors and Prayer for Reversal accompanying this petition and to which reference is hereby made.

The plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the records, proceedings, and documents upon which said final order and decree was based, duly authenticated, be sent to the

1117 Supreme Court of the United States under the rules of said Court in such cases made and provided.

(S) THURMAN ARNOLD,  
Thurman Arnold,  
*Assistant Attorney General.*

(S) SAMUEL S. ISSEKS,  
Samuel S. Isseks,

*Special Assistant to the Attorney General.*

(S) J. C. WILSON,  
J. C. Wilson,

*Special Assistant to the  
Attorney General for the United States.*

This 8th day of December 1941.

1118 : In District Court of the United States, Southern  
District of New York

( [Title omitted.] )

*Assignments of error and prayer for reversal*

The United States of America, plaintiff in the above entitled cause, in connection with its petition for an appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and to the entry of the final order and decree of said District Court on November 25, 1941, in the above-entitled cause, and says that in the entry of the final order and decree the said District Court committed error to the prejudice of the said plaintiff in the following particulars:

1. The Court erred in holding that the defendants had not unlawfully contracted, combined, and conspired to restrain interstate trade and commerce in the manufacture, sale, and distribution of the Univis multifocal lenses and Univis multifocal lens blanks in violation of Sections 1 and 3 of the Sherman Act (15 U. S. C. 1, 3), by executing and enforcing licensing agreements between The Univis Corporation and The Univis Lens Company, Inc., and The Univis Corporation and optical wholesalers or finishing retailers.

2. The Court erred in holding the following agreements to be lawful patent license agreements, and in refusing to hold that said agreements are in violation of Sections 1 and 3 of the Sherman Act (15 U. S. C. 1, 3):

1119 (a) The agreement between The Univis Corporation and The Univis Lens Company, Inc., requiring The Univis Lens Company, Inc., to sell Univis multifocal lens blanks only to purchasers approved and licensed by The Univis Corporation:

(b) The agreement between The Univis Corporation and optical wholesalers, fixing the minimum prices at which each said wholesaler could sell Univis lens blanks and the finished lenses processed from Univis lens blanks, designating the class of customers to whom each said optical wholesaler could sell Univis lens blanks and finishing lenses, and otherwise controlling and restraining the handling of ophthalmic goods by said wholesalers;

(c) The agreements between The Univis Corporation and finishing retailers, fixing the minimum prices at which each said retailer could sell the finished lenses processed from lens blanks purchased from The Univis Lens Company, Inc., designating the class of customers to whom each said finishing retailer could sell the finished lenses, and otherwise controlling and restraining the handling of ophthalmic goods by said retailers.

3. The Court erred in refusing to hold that the defendants had violated Sections 1 and 3 of the Sherman Act by contracting, combining and conspiring to do the following:

(a) Designate and select, according to arbitrary rules and regulations, optical wholesalers who would be permitted to handle, deal in, and sell Univis lens blanks and Univis lenses and refusing to sell said lens blanks and lenses except to wholesalers so designated and selected;

1120 (b) Fix the minimum prices at which Univis wholesaler licensees could sell Univis lens blanks and finished Univis lenses;

(c) Designate the classes of customers to whom Univis wholesaler licensees could sell Univis lens blanks and finished Univis lenses;

(d) Prevent such designated and selected wholesalers from selling Univis lens blanks and finished Univis lenses to wholesalers and retailers not designated by defendants.

4. The Court erred in refusing to hold that the defendants had violated Sections 1 and 3 of the Sherman Act by contracting, combining and conspiring to do the following:

(a) Designate and select, according to arbitrary rules and regulations, finishing retailers who would be permitted to handle, deal in and sell finished Univis lenses, and refusing to sell said finished lenses except to finishing retailers so designated and selected;

(b) Fix the minimum prices at which Univis finishing retailer licensees could sell finished Univis lenses;

(c) Designate the customers to whom Univis finishing retailer licensees could sell finished Univis lenses;

(d) Prevent such designated and selected finishing retailers from selling Univis lens blanks and finished Univis lenses to retailers designated and selected by defendants.

5. The Court erred in refusing to hold that the defendants had violated Sections 1 and 3 of the Sherman Act by contracting,  
1121 combining and conspiring to restrain interstate trade and commerce by improperly using their patent privilege to control and to attempt to control the sale and distribution of materials not covered by defendants' patents and not manufactured, distributed, or sold by defendants.

6. The Court erred in holding that the defendants followed a policy of making licenses available to all dealers who maintained the requisite standards of quality, service, and performance at each stage of the manufacturing process, and in refusing to hold that the maintenance of standards of quality, service, and workmanship in the processing of Univis lens blanks and finished lenses was not the motivating reason for defendants' licensing policy.

7. The Court erred in holding that the sale of Univis lens blanks by the defendants to optical wholesalers and finishing retailers does not remove said lens blanks from the scope of the defendants' patent privilege, and in refusing to hold that the defendants, after selling the lens blanks, have no right to control the processing, use, or sale of such lens blanks or finished lenses.

8. The Court erred in refusing to hold that defendants' licensing scheme was so tainted with illegality and constituted such an unreasonable restraint of trade as to require the striking down of the licensing scheme in its entirety in order to correct the abuses inherent therein.

9. The Court erred in holding that United States Letters Patent Nos. 1,632,208; 1,845,940; 1,876,497; 1,879,769; 1,899,777; 1,932,100; 2,030,968; 2,183,885; and Reissue 19,142; owned or controlled by the defendants, cover the finished lenses, and in refusing to hold that the patents cover only the type of multifocal lens blanks known as Univis lens blanks.

10. The Court erred in holding that the ordinary grinding and polishing operations performed by the optical wholesalers and finishing retailers were manufacturing operations whereby a patented Univis lens was manufactured.

11. The Court erred in holding that the defendants' licensing system was designed solely to enable the defendants to protect their patent grants and secure the reward of their patent monopoly, and in refusing to hold that defendants' licensing system was an illegal scheme intended to prevent competition in the distribution and sale of ophthalmic goods.

12. The Court erred in excluding testimony of witnesses Aaron A. Potter and William N. Cook, which testimony would have established that wholesalers and finishing retailers processed Univis bifocal lens blanks in exactly the same manner they processed bifocal lens blanks of other manufacturers.

13. The Court erred in sustaining defendants' objection to the introduction into evidence of plaintiff's exhibit 17 for identification, a letter from Jack Silverman to Edward Weinberg dated September 1, 1938, in which Silverman stated that Univis licenses were limited to 20% of the trade.

14. The Court erred in sustaining the defendants' objection to the introduction into evidence of plaintiff's exhibits 49 for identification and 50 for identification, which were small boxes containing Panoptik and Tillyer bifocal lens blanks.

15. The Court erred in entering a final order and decree dismissing the complaint as to the license agreements between The Univis Corporation and The Univis Lens Company, Inc., and the wholesaler and finishing retailer licensees.



1123 16. The Court erred in refusing to enter a final decree annulling the agreements between The Univis Corporation and The Univis Lens Company, Inc., and the agreements between The Univis Corporation and the wholesalers and finishing retailers, and in refusing to issue an injunction against the defendants enjoining them from entering into similar contracts in the future.

17. The Court erred in failing to enter such order or orders with respect to the Univis wholesaler licenses and Univis finishing retailer licenses, and the agreements between The Univis Corporation and The Univis Lens Company, Inc., as were and are consistent with right and justice within the laws of the United States.

Wherefore, plaintiff prays that the final order and decree of the District Court dismissing the complaint as to the License Contracts entered into between The Univis Corporation and wholesale licensees or finishing retailer licensees may be reversed and for such other and fit relief as to the Court may seem just and proper.

(S) THURMAN ARNOLD,  
Thurman Arnold,  
*Assistant Attorney General.*

(S) SAMUEL S. ISSEKS,  
Samuel S. Isseks,  
*Special Assistant to the Attorney General.*

(S) J. C. WILSON,  
James C. Wilson,  
*Special Assistant to the Attorney General.*

This 8th day of December 1941.

1125 In District Court of the United States for the  
Southern District of New York

Civil No. 10-392

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS COMPANY, INC.; THE UNIVIS CORPORATION;  
JACK SILVERMAN; MYER H. STANLEY; G. F. STANLEY; N. M.  
STANLEY, DEFENDANTS.

*Order allowing appeal*

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order and decree of this Court in this cause entered on the 25th day of Novem-



ber 1941, and having also made and filed its Petition for Appeal, Assignment of Errors and Prayer for Reversal, and Statement of Jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided, it is

Ordered and decreed that the appeal be and the same is hereby allowed as prayed for.

(S) C. G. GALSTON,  
*United States District Judge for  
the Southern District of New York.*

This 8th day of December 1941.

1128 [Citation in usual form omitted in printing.]

1129 In the District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Praeceptum for transcript on cross-appeal*

To The CLERK OF THE UNITED STATES DISTRICT COURT:

In addition to the transcript of the record in the above entitled cause in the matter of the appeal prosecuted herein by the plaintiff, please prepare in said transcript in the order given below the following papers under the cross-appeal of the defendants, viz:

1. Notice of Cross-Appeal.
2. Petition for Cross-Appeal, Statement of Jurisdiction, Assignment of Errors, Prayer for Reversal.
3. Order Allowing Appeal.
4. Order Staying Execution of Decree.
5. Appeal Bond on Cross-Appeal.
6. Citation on Cross-Appeal.

(Sgd.) FREDERICK S. DUNCAN,  
*Address: 75 E. 45th Street, New York, N. Y.*

(Sgd.) H. A. TOULMIN, Jr.,

(Sgd.) ROWAN A. GREER,  
*Address: Toulmin Bldg., Dayton, Ohio,  
Attorneys and Solicitors for Defendants,  
Cross-Appellants.*

Dated this 18th day of December 1941.

1183 In District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Petition for cross-appeal; assignment of errors; and prayer for  
reversal in part*

*Petition for cross-appeal*

Considering themselves aggrieved by those portions of the final order and decree of the District Court of the United States for the Southern District of New York, in the above entitled cause, entered on November 25, 1941, wherein and whereby the Bill of Complaint was in part sustained as against the defendants and the defendants held to have violated in certain instances Sections 1 and 3 of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, and an injunction decreed against said defendants and said defendants taxed with one-half of the costs herein, the defendants, The Univis Lens Company, Inc.; The

Univis Corporation; Jack R. Silverman; Meyer H. Stanley; 1134 G. F. Stanley; and N. M. Stanley, jointly and severally, do hereby pray that a cross-appeal be allowed to the Supreme Court of the United States and the appeal bond in the amount of Two Hundred Fifty Dollars (\$250.00) as fixed in said final order and decree, tendered by the said defendants and cross-appellants, be approved by the Court.

The Supreme Court of the United States has jurisdiction of this cross-appeal under the provisions of Judicial Code, Sec. 238 as amended, 28 U. S. C. Sec. 345; Act of Feb. 11, 1903, c. 544, Sec. 2, 32 Stat. 823 as amended; 15 U. S. C. Sec. 29; 36 Stat. 1167, section 291, 15 U. S. C. A. 29; Ethyl Gasoline Corp. v. United States, 309 U. S. 436; Interstate Circuit, Inc. v. United States, 306 U. S. 208; Sugar Institute v. United States, 297 U. S. 553; Atlantic Cleaners & Dyers v. United States, 286 U. S. 427.

*Assignment of errors*

And the said defendants, jointly and severally, assign the following errors in the record and proceedings in said cause, to wit:

I

The court erred in holding and decreeing that the defendants, The Univis Lens Company, Inc.; The Univis Corporation; Jack R. Silverman; Meyer H. Stanley; G. F. Stanley; and N. M. Stan-

ley, have entered into contracts and agreements which violate Section 1 and Section 3 of an Act of Congress approved July 2, 1890, entitled, "An Act to Protect Trade and Commerce Against 1135 Unlawful Restraints and Monopolies," as amended, by the said The Univis Corporation entering into license agreements with nongrinding prescription and fitting optical retailers, which fix the price at which said retailers shall sell Univis multifocal lenses and otherwise control the activities of said nongrinding prescription and fitting retail licensees, because said licenses are within the rights of the said defendants and said The Univis Corporation conferred by the patent laws under the patents owned or controlled by The Univis Corporation. (See par. 2 of the final decree herein.)

## II

The court erred in holding and decreeing that the Bill of Complaint as to said license contracts between The Univis Corporation and nongrinding prescription and fitting optical retailers should be and is sustained, because said license contracts are within the rights conferred by the patent laws and under the patents owned or controlled by said The Univis Corporation in the selling of patented articles. (See par. 2 of the final decree herein.)

## III

The court erred in holding and decreeing that the provisions of each license agreement now in effect between the defendant The Univis Corporation and its nongrinding prescription and fitting optical retailer licensees which prohibit or purport to prohibit the said licensees from selling Univis multifocal lenses 1136 to any purchaser except those designated by the defendants or any of them are illegal, null, and void, because the said provisions of said license agreements are within the rights conferred by the patent laws under the Letters Patent owned or controlled by the defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See par. 3 of the final decree herein.)

## IV

The court erred in holding and decreeing that the provisions of each license agreement now in effect between the defendant, The Univis Corporation, and its nongrinding prescription and fitting optical retail licensees which purport to fix a minimum price for Univis multifocal lenses are illegal, null, and void, because said provisions of said license agreements are within the rights conferred by the patent laws under the Letters Patent owned or con-

trolled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See par. 3 of the final decree herein.)

## V

The court erred in holding and decreeing that the provisions of each license agreement now in effect between the defendant, The Univis Corporation, and its nongrinding prescription and fitting optical retail licensees which purport to otherwise control the activities of said nongrinding prescription and fitting retail licensees are illegal, null, and void, because said provisions of said license agreement are within the rights conferred by the patent laws under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See par. 3 of the final decree herein.)

## VI

The court erred in holding and decreeing that the defendant, The Univis Corporation, shall forthwith cancel said license agreements now in effect between the defendant, The Univis Corporation, and its nongrinding prescription and fitting optical retail licensees and give notice within sixty days from the date of the entry of the decree herein to each such nongrinding prescription and fitting retail licensee that said contract has been cancelled and is not in effect, because said provisions of said license agreement are within the rights conferred by the patent laws under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See par. 3 of the final decree herein.)

## VII

The Court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from enforcing or attempting to enforce any provision in a license contract or any agreement between the defendant, The Univis Corporation, or any of the other defendants and nongrinding prescription and fitting optical retailers which prohibits or purports to prohibit the said retailer from selling Univis multifocal lenses to any purchaser except the purchasers designated by the defendant corporations or by the individual defendants, because said provisions of said license agreements are within the rights conferred by the patent laws



under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See subpar. (a) of par. 4 of the final decree herein.)

## VIII

The court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from enforcing or attempting to enforce any provision in a license contract or any agreement between the defendant, The Univis Corporation, or any of the other defendants and nongrinding prescription and fitting optical retailers which fixes or purports to fix the price at which said nongrinding prescription and fitting retailer shall sell Univis multifocal lenses, because said provisions of said license agreements are within the rights conferred by the patent laws under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See subpar. (a) of par. 4 of the final decree herein.)

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## IX

The court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from enforcing or attempting to enforce any provision in a license contract or any agreement between the defendant, The Univis Corporation or any of the other defendants and nongrinding prescription and fitting optical retailers which otherwise controls the activities of said nongrinding prescription and fitting retailers, because said provisions of said license agreements are within the rights conferred by the patent laws under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See subpar. (a) of par. 4 of the final decree herein.)

## X

The court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from including in and enforcing any future contract or agreement with any nongrinding prescription and fitting optical retailer any provision which prohibits or purports to prohibit said nongrinding prescription and fitting retailer from selling Univis multifocal lenses to any purchaser except the purchasers designated



by the defendant corporations or the individual defendants, because said provisions of said license agreements are 1140 within the rights conferred by the patent laws under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See subpar. (b) of par. 4 of the final decree herein.)

## XI

The court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from including in and enforcing any future contract or agreement with any nongrinding prescription and fitting optical retailer any provision which fixes or purports to fix the price at which said nongrinding prescription and fitting retailer shall sell Univis multifocal lenses, because said provisions of said license agreements are within the rights conferred by the patent laws under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See subpar. (b) of par. 4 of the final decree herein.)

## XII

The court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from including in and enforcing any future contract or agreement with any nongrinding prescription and fitting optical 1141 retailer any provision which otherwise controls the activities of said nongrinding prescription and fitting retailer, because said provisions of said license agreements are within the rights conferred by the patent laws under the Letters Patent owned or controlled by the said defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles. (See subpar. (b) of par. 4 of the final decree herein.)

## XIII

The court erred in holding and decreeing that there was any differentiation or distinction between the license contracts of the defendant, The Univis Corporation, with the nongrinding prescription and fitting optical retailers and the license contracts between the defendant, The Univis Corporation, and the wholesale distributor licensees or grinding and finishing retail licensees, because all of these license contracts are similarly within the rights

conferred by the patent laws and the patents owned or controlled by the defendant, The Univis Corporation, in the manufacture, distribution, and sale of the patented articles of the defendant, The Univis Corporation.

## XIV

The court erred in failing to hold and decree that the license contracts between the defendant, The Univis Corporation, and the nongrinding prescription and fitting optical retail licensees are valid and lawful contracts under the patent laws of the United States and the patents owned or controlled by the defendant, The Univis Corporation, in the manufacture, distribution, and sale of its patented articles.

1142

## XV

The court erred in failing to hold and decree that the Bill of Complaint as to the license contracts between the defendant, The Univis Corporation, and its nongrinding prescription and fitting optical retailers should be dismissed.

## XVI

The court erred in holding and decreeing that the defendants, The Univis Lens Company, Inc.; The Univis Corporation; Jack R. Silverman; Meyer H. Stanley; G. F. Stanley; and N. M. Stanley by entering into Fair Trade Agreements and contracts in addition to the license contracts of The Univis Corporation have violated Section 1 and Section 3 of an Act of Congress approved July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, by undertaking to establish retail price maintenance as to multifocal lenses which fix the minimum sales price for Univis multifocal lenses, because said Fair Trade Agreements and contracts are valid and lawful as being within the exceptions of said Act as provided in the Miller-Tydings amendment of said Act of July 2, 1890 in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See par. 5 of the final decree herein.)

## XVII

The court erred in holding and decreeing that the Bill of Complaint as to said Fair Trade resale price maintenance agreements and contracts between the defendants, The Univis Corporation; The Univis Lens Company, Inc.; Jack R. Silverman; Meyer H. Stanley; G. F. Stanley; and N. M. Stanley and their li-

1143 censees in addition to the license contracts of The Univis Corporation should be sustained, because said Fair Trade Agreements and contracts are valid and lawful as being with the exceptions of the Act of July 2, 1890 as provided in the Miller-Tydings amendment of said Act in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See par. 5 of the final decree herein.)

## XVIII

The court erred in holding and decreeing that all Fair Trade resale price maintenance contracts under the trade-marks of The Univis Lens Company, Inc., now outstanding which purport to fix the minimum resale price for Univis multifocal lenses under the trade-marks of The Univis Lens Company, Inc. are illegal, null, and void, because said Fair Trade Agreements and contracts are valid and lawful as being within the exceptions of the Act of July 2, 1890, as provided in the Miller-Tydings amendment of said Act in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See par. 6 of the final decree herein.)

## XIX

The court erred in holding and decreeing that all Fair Trade resale price maintenance contracts under the trade-marks of The Univis Lens Company, Inc., now outstanding which purport to designate or which designate the customers to whom Univis multifocal lenses shall be sold are illegal, null, and void, because said Fair Trade Agreements and contracts are valid and lawful  
1144 as being within the exceptions of the Act of July 2, 1890, as provided in the Miller-Tydings amendment of said Act in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See par. 6 of the final decree herein.)

## XX

The court erred in holding and decreeing that all Fair Trade resale price maintenance contracts under the trade-marks of The Univis Lens Company, Inc., now outstanding which otherwise control the activities of wholesalers or retailers are illegal, null, and void, because said Fair Trade Agreements and contracts are valid and lawful as being within the exceptions of the Act of July 2, 1890, as provided in the Miller-Tydings amendment of said Act in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See par. 6 of the final decree herein.)

## XXI

The court erred in holding and decreeing that said defendant, The Univis Lens Company, Inc., shall forthwith cancel said Fair Trade resale price maintenance contracts and give due notice within sixty days from the date of the entry of the decree herein as to each such wholesaler that each such contract has been cancelled and is of no effect together with a true copy of this decree, because said Fair Trade Agreements and contracts are valid and lawful as being within the exceptions of the Act of July 2, 1890, as provided in the Miller-Tydings amendment of said Act 1145 in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See par. 6 of the final decree herein.)

## XXII

The court erred in holding and decreeing that the defendant corporations, their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from enforcing or attempting to enforce any Fair Trade resale price maintenance contract between the defendant. The Univis Lens Company, Inc., under its trade-marks and any wholesaler or any optical retailer which prohibits or purports to prohibit said wholesaler or retailer from selling Univis multifocal lenses to any customer or purchaser except those designated by the defendant, The Univis Lens Company, Inc., because said Fair Trade Agreements and contracts are valid and lawful as being within the exceptions of the Act of July 2, 1890, as provided in the Miller-Tydings amendment of said Act in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See subpar. (a) of par. 7 of the final decree herein.)

## XXIII

The court erred in holding and decreeing that the defendant corporations, and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from enforcing or attempting to enforce any Fair Trade resale price maintenance contract between the defendant, The Univis Lens Company, Inc., under its trade-marks and any optical wholesaler or any optical retailer which fixes or attempts to fix the minimum price to be charged by said wholesaler or retailer in the sale of Univis multifocal lenses, because said Fair Trade Agreements and contracts are valid and lawful as being within the exceptions of the Act of

July 2, 1890, as provided in the Miller-Tydings amendment of said Act in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See subpar. (a) of par. 7 of the final decree herein.)

## XXIV

The court erred in holding and decreeing that the defendant corporations, their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from enforcing or attempting to enforce any Fair Trade resale price maintenance contract between the defendant, The Univis Lens Company, Inc., under its trade-marks and any optical wholesaler or any optical retailer which otherwise controls the activities of said wholesaler or retailer, because said Fair Trade Agreements and contracts are valid and lawful as being with the exceptions of the Act of July 2, 1890, as provided in the Miller-Tydings amendment of said Act in the protection of the marketing and price policy of the defendants in selling patented and trade-marked articles. (See subpar. (a) of par. 7 of the final decree herein.

1147

## XXV

The court erred in failing to hold and decree that all of the Fair Trade resale price maintenance contracts between the defendants, or any of them, involved herein were valid, legal and binding as being within the exception of the provisions of the Miller-Tydings amendment of the Act of July 2, 1890 as to the distribution and sale of patented and trade-marked articles.

## XXVI

The court erred in failing to hold and decree that the Bill of Complaint as to said Fair Trade resale price maintenance contracts should be dismissed, because said Fair Trade resale price maintenance contracts are valid, binding, and legal as coming within the provisions of the Miller-Tydings amendment of the Act of July 2, 1890.

## XXVII

The court erred in holding and decreeing that the defendants, The Univis Lens Company, Inc.; The Univis Corporation; Jack R. Silverman; Meyer H. Stanley; G. F. Stanley; and N. M. Stanley, have violated Sections 1 and 3 of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as



amended, by combining and conspiring among themselves to prevent and by preventing the Titmus Optical Company from manufacturing and distributing multifocal lenses or multifocal lens blanks, because said holding is contrary to the law and the evidence in that the evidence is that the defendants were not guilty of any combining or conspiring in violation of law, but merely exercised the rights and privileges conferred upon the defendants under the patent laws in notifying a competing manufacturer of the rights of the defendants under Letters Patent owned or controlled by the defendant, The Univis Corporation. (See par. 8 of the final decree herein.)

## XXVIII

The court erred in holding and decreeing that the defendants, The Univis Lens Company, Inc.; The Univis Corporation; Jack R. Silverman; Meyer H. Stanley; G. F. Stanley; and N. M. Stanley, have violated Sections 1 and 3 of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, by combining and conspiring with licensed Univis wholesalers and licensed finishing retailers to prevent and by preventing the Titmus Optical Company from manufacturing and distributing multifocal lenses and multifocal lens blanks, because said holding is contrary to the evidence in the case, which shows that the defendants entered into no combination or conspiracy in violation of law with any licensee to prevent the Titmus Optical Company from manufacturing and distributing multifocal lenses and multifocal lens blanks, but merely exercised the rights and privileges conferred upon the defendants under the patent laws of the United States and the Letters Patent owned or controlled by the defendant, The Univis Corporation. (See par. 8 of the final decree herein.)

## XXIX

1149 The court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each of the individual defendants be perpetually enjoined and restrained from entering into any combination, agreement, or conspiracy among themselves to prevent the Titmus Optical Company or any other person or company from manufacturing and distributing multifocal lenses and multifocal lens blanks by threats of or refusing to purchase or inducing others to refuse to purchase or by compelling purchasers not to deal with such person or company, because there is no evidence in the record as to any such combination, agreement, or conspiracy

between the defendants or any other person or company, the evidence being that with regard to said Titmus Optical Company the defendants acted within the rights and privileges conferred upon them under the patent laws of the United States as to Letters Patent owned or controlled by the defendant, The Univis Corporation. (See subpar. (a) of par. 9 of the final decree herein.)

## XXX

The court erred in holding and decreeing that the defendant corporations and their officers, agents, representatives, and employees and each individual defendant be perpetually enjoined and restrained from entering into any combination, agreement, or conspiracy with optical wholesalers or optical retailers to exert pressure by threats of cancellation of orders, by cancellation of orders, or by inducing others to cancel orders from the Titmus

Optical Company or any other person or company in order 1150 to prevent said Titmus Optical Company or other person or company from manufacturing and selling multifocal lenses or multifocal lens blanks, because there is no evidence of any such combination, agreement or conspiracy, all of the evidence in the case showing that any and all action of the defendants or any of them as to said Titmus Optical Company or any other person or company was within the rights and privileges conferred upon the defendants under the patent laws of the United States and the Letters Patent owned or controlled by the defendant, The Univis Corporation. (See subpar. (b) of par. 9 of the final decree herein.)

## XXXI

The court erred in failing to hold and decree that the Bill of Complaint as to any charge of combination, agreement or conspiracy among or between the defendants or with any optical wholesaler or optical retailer as to said Titmus Optical Company or any other person or company should be dismissed, because there is no evidence in the record of any unlawful combination, agreement or conspiracy between the defendants with themselves or with any optical wholesaler or optical retailer as to said Titmus Optical Company or any other person or company.

## XXXII

The court erred in failing to hold and decree that the license system of the defendants and particularly of The Univis Corporation herein in the distribution and sale of the patented and trademarked articles of the defendants was valid, binding and legal

as being within the rights and privileges of the patent laws of the United States under the patents owned or controlled by the defendants, The Univis Corporation, and the registered trade-marks of the defendants.

### XXXIII

The court erred in finding in its Finding of Fact No. XIII that the nongrinding prescription and fitting retail licensees purchased finished Univis lenses in accordance with their licenses from wholesaler licensees in that the evidence shows that the nongrinding prescription and fitting licensee himself performs manufacturing acts under the patent laws of the United States and within the monopoly of the Letters Patent owned or controlled by the defendant, The Univis Corporation.

### XXXIV

The court erred in concluding in its Conclusion of Law No. XI that the nongrinding prescription and fitting retail licensees purchased an article which has passed outside the monopoly of the patents of The Univis Corporation by the sale to said nongrinding prescription and fitting licensee, because the evidence shows under the law that the article purchased by said nongrinding prescription and fitting retail licensees has not passed outside the monopoly of the patents of the defendants, The Univis Corporation, but comes within the rights and privileges of the patent laws of the United States under the Letters Patent owned by or controlled by The Univis Corporation.

### XXXV

1152 The court erred in its conclusion under Conclusion of Law No. XII that the design, prescription work when done, and resulting adjustments and fitting made by the nongrinding prescription and fitting retail licensee who purchased finished lenses from the wholesale distributor or grinding retail licensee did not constitute any manufacture within the grant of the patents owned by The Univis Corporation, because the evidence under the law shows that this work of the nongrinding prescription and fitting retail licensee does constitute an act of manufacture under the patent laws of the United States and within the grant of the Letters Patent owned or controlled by The Univis Corporation.

### XXXVI

The court erred in its conclusion in Conclusion of Law No. XIII that the license contracts between The Univis Corporation

and the nongrinding prescription and fitting retail licensees are contracts beyond the grant of the monopoly of the patents owned or controlled by The Univis Corporation and constitute a violation by the defendants of Sections 1 and 3 of the Act of July 2, 1890, as amended, because the record shows under the law and the evidence that said license contracts between The Univis Corporation and the nongrinding prescription and fitting retail licensees are within the rights and privileges of the defendants under the patent laws of the United States and within the grant of the monopoly of the patents owned or controlled by The Univis Corporation and not a violation by the defendants of Sections 1 and 3 of the Act of July 2, 1890.

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## XXXVII

The court erred in its conclusion in Conclusion of Law No. XIV that the Fair Trade Agreements between The Univis Lens Company, Inc., the wholesalers, the finishing grinders, and the nongrinding retail representatives under the registered trade-mark "Univis" are not within the provisions of the Miller-Tydings amendment of the Act of July 2, 1890, and are therefore invalid in law, because the evidence under the law shows that The Univis Lens Company, Inc. and the defendants are producers within the provisions of the said Miller-Tydings amendment as to said registered trade-mark and that said Fair Trade Agreements are, as a consequence, valid and binding in law.

## XXXVIII

The court erred in its conclusion in Conclusion of Law No. XVI that the Fair Trade Agreements between the Univis Lens Company, Inc., and its customers constitute a violation of Sections 1 and 3 of the Act of July 2, 1890 as amended, because The Univis Lens Company, Inc., is a producer of finished lenses when the blank is sold by it and the Univis Lens Company, Inc. is thereby selling a commodity of its manufacture under the trade-mark "Univis" and the Fair Trade Agreements are, as a matter of law, valid under the Miller-Tydings amendment of the Act of July 2, 1890.

## XXXIX

The court erred in failing to conclude that the Bill of Complaint as to the Fair Trade Agreements should be dismissed.

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## XLX

The court erred in its conclusion in Conclusion of Law No. XVII that in the instance of the Titmus Optical Company the

defendants have violated Sections 1 and 3 of the Act of July 2, 1890, in that there is no evidence in the record under the law as to any violation of Sections 1 and 3 of said Act in the instance of the Titmus Optical Company.

### XXI

The court erred in its conclusion in Conclusion of Law No. XXI that the plaintiff is entitled to an injunction restraining the defendants from enforcing or attempting to enforce any provisions of the licensing contracts between The Univis Corporation and the nongrinding prescription and fitting retail licensees, because said licensing contracts are valid, binding and within the rights and privileges conferred under the patent laws of the United States under the Letters Patent owned or controlled by The Univis Corporation.

### XLII

The court erred in its conclusion in Conclusion of Law No. XXII that the plaintiff is entitled to an injunction restraining the defendants from enforcing or attempting to enforce any of the Fair Trade Agreements or contracts between The Univis Lens Company, Inc., and the optical wholesalers and optical retailers, both finishing retailers and prescription retailers, because said Fair Trade Agreements or contracts are valid and binding in law under the provisions of the Miller-Tydings amendment of the Act of July 2, 1890.

1155

### XLIII

The court erred in its conclusion in Conclusion of Law No. XXIII that the plaintiff was entitled to an injunction restraining the defendants from entering into any combinations, conspiracy, or agreement either among themselves or with the licensees to prevent, by threats of or by cancellation of orders or any other means, any person or company from manufacturing and selling multifocal lenses or multifocal lens blanks, because the evidence in the record under the law shows that all acts of the defendants were lawful and only in an effort to protect their manufacture and use and sale as provided by the patent laws of the United States as to notice of patent infringement against prospective infringers.

### XLIV

The court erred in finding in its Finding of Fact No. XI that the retailer sells no commodity which bears or the container of which bears the trade-mark of the "Producer" of the finished lenses, because the evidence shows that the sale by the retailer is of a com-



commodity which bears or the container of which bears the registered trade-mark of the producer within the provisions of the Miller-Tydings amendment to the Act of July 2, 1890.

#### XLV

The court erred in failing to find that the cartons in which the blanks are sold by The Univis Lens Company, Inc., to wholesalers or retailers contain the registered trade-mark of the defendants

"Univis," because the evidence shows that the carton in 1156 which the blanks are sold by The Univis Lens Company, Inc., to wholesalers or retailers does contain within the requirements of the law the registered trade-mark of the defendants "Univis."

#### XLVI

The court erred in failing to find that the retailer sells a commodity which bears or the container of which bears the registered trade-mark of the producer of such commodity within the purview and meaning of the Miller-Tydings amendment to the Act of July 2, 1890, in the protection of the distribution and sale of the patented and trade-marked articles of the defendants.

#### XLVII

The court erred in failing to find and conclude as a matter of fact and law that all of the acts of the defendants complained of in the Bill of Complaint were not sustained by the evidence in this case under the law, and that the Bill of Complaint herein in all of its allegations of unlawful conduct in violation of Sections 1 and 3 of the Act of July 2, 1890, should be dismissed.

#### XLVIII

The court erred in decreeing that any part of the costs of this action be taxed against the defendants or any of them.

#### *Prayer for reversal*

1157 For which above and foregoing errors the defendants, The Univis Lens Company, Inc.; The Univis Corporation; Jack R. Silverman; Meyer H. Stanley; C. F. Stanley; and N. M. Stanley, pray that those portions of the decree of the District Court of the United States for the Southern District of New York, entered November 25, 1941, in the above entitled cause, holding that the defendants or any of them have been guilty of any violation of law, and particularly any violation of Sections

708 UNITED STATES VS. THE UNIVIS LENS CO., INC. ET AL.

1 and 3 of the Act of July 2, 1890, be reversed, and the Bill of Complaint dismissed; that the appeal bond tendered by the defendants herein in the sum of Two Hundred Fifty Dollars (\$250.00) be approved; that citation issue to the appellant and cross-appellee, the United States of America, named above; and for such other and further relief to which the defendants and cross-appellants may be entitled.

Respectfully submitted.

(Sgd.) FREDERICK S. DUNCAN,

*Solicitor and Attorney for the  
defendants and cross-appellants.*

*Address: 75 East 45th Street, New York, New York.*

(Sgd.) TOULMIN & TOULMIN,

*Address: Toulmin Bldg., Dayton, Ohio.*

(Sgd.) H. A. TOULMIN, Jr.,

*Address: Toulmin Bldg., Dayton, Ohio.*

(Sgd.) ROWAN A. GREER,

*Address: Toulmin Bldg., Dayton, Ohio.*

*Of-counsel for the defendants and cross-appellants.*

1158

In District Court of the United States  
For the Southern District of New York

Civil Action No. 10-392

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS COMPANY, INC.; THE UNIVIS CORPORATION;  
JACK R. SILVERMAN; MEYER H. STANLEY; G. F. STANLEY; AND  
N. M. STANLEY, DEFENDANTS

*Order allowing cross-appeal*

In the above-entitled cause, the defendants, The Univis Lens Company, Inc., a corporation; The Univis Corporation, a corporation; Jack R. Silverman, an individual; Meyer H. Stanley, an individual; G. F. Stanley, an individual; and N. M. Stanley, an individual, having made and filed their joint and several petition praying a cross-appeal to the Supreme Court of the United States from certain portions of the final order and decree of this Court in this cause entered on the twenty-fifth day of November 1941, and having also made and filed their petition for cross-appeal, assignment of errors, statement of jurisdiction, and prayer for reversal, and cross-appeal bond, and having in all respects conformed to the statutes and rules of court in such cases made and provided;

Ordered and decreed that said cross-appeal be and the same is hereby allowed as prayed for.

Dated this 18th day of December 1941.

(Sgd.) C. G. GALSTON,  
U. S. District Judge for the  
Southern District of New York.

1159

In District Court of the United States  
For the Southern District of New York

[Title omitted.]

*Order staying execution of decree*

Upon application of the defendants for a stay pending cross-appeal and determination thereof as provided in the final decree entered herein on November 25, 1941:

It is hereby ordered, adjudged, and decreed, that execution of said final decree entered herein under date of November 25, 1941, and issuance of any injunction or other order for executory action pursuant to said decree, and compliance by the defendants or any of them with any provision of said decree, be and the same hereby are stayed pending final determination of this cause either upon the appeal by the United States of America or the cross-appeal by the defendants.

Dated this 18th day of December 1941.

(Sd.) C. G. GALSTON,  
U. S. District Judge.

1159-A

BOND

For \$250 by Indemnity Insurance Co. of North America, executed Dec. 18, 1941, and filed.

1160

[Citation in usual form showing service on Samuel S. Isseks, omitted in printing.]

1162

[Clerk's certificate to foregoing transcript omitted in printing.]

1163 In United States District Court, for the Southern  
District of New York

[Title omitted.]

*Stipulation as to transcript of record*

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter.

Dated: January 6, 1942, New York, N. Y.

SAMUEL S. ISSEKS,  
Samuel S. Isseks,

*Special Assistant to the Attorney General,  
Attorney for Plaintiff-Appellant.*

FREDERICK S. DUNCAN,  
*Attorney for Defendant-Appellees.*

1164 In the Supreme Court of the United States

October Term, 1941

No. 855

*Statement of points to be relied upon, designation of parts of the  
record necessary for consideration thereof*

(Filed Jan. 17, 1942)

1. Now comes the appellant in the above-entitled cause and for its statement of the points on which it intends to rely in its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. The appellant states that the following parts of the record are necessary for the consideration of the foregoing points and therefore designates them as parts of the record to be printed by the Clerk of the Supreme Court of the United States:

(1) Bill of Complaint (pp. 6-19).

(2) Defendants' Motion to Vacate and Quash Service of Summons and Dismiss Action and Attached Affidavits in Support of Motion to Vacate Service of Summons and to Dismiss Action by Jack R. Silverman, Myer H. Stanley, G. F. Stanley, and N. M. Stanley (pp. 20-22, pp. 23-36).

1165 (3) Notice of Motion to Vacate and Quash Service of Summons and Dismiss Action (pp. 37-38).

(4) Affidavits in Opposition to Motion to Vacate Service of

Summons and to Dismiss Action by Walter Conrad, Jacob Lampert, Aaron Klein, John R. Keenan, Max Zadek, Joseph Goodstein, Harry Seulowitz, Walter E. Lehmann, Irma Levin, Samuel Yeager, Maurice Friedlander, Rose Weiss, Jack R. Silverman (pp. 39-75).

(5) Memorandum opinion of Honorable Alfred C. Coxe, United States District Judge, Southern District of New York, denying defendants' motion to quash the service of summons (p. 70).

(6) Notice of Settlement and Order Denying Motion to Vacate and to Quash Service (pp. 77-79).

(7) Defendants' answer to Bill of Complaint and Exhibit B attached to answer. Exhibit A is omitted because later reproduced as defendants' Exhibit M (pp. 80-113).

1166 (8) Official record of the stenographic minutes, containing a transcript of evidence and proceedings before the Honorable Clarence G. Galston, United States District Judge, Southern District of New York, on June 5, 6, and 9, 1941 (pp. 114-392).

(9) The following exhibits:

(a) Plaintiff's exhibits 2 to 4, inclusive, 6 to 45, inclusive, and 51 (pp. 393-825).

(b) Defendants' exhibits A, E, F, M, N (pp. 826-1055).

(10) Opinion of Honorable Clarence G. Galston, United States District Judge, Southern District of New York, dated September 17, 1941 (pp. 1056-1084).

(11) Findings of Fact and Conclusions of Law, filed November 25, 1941 (pp. 1085-1109).

(12) Final Decree of the District Court, dated November 25, 1941 (pp. 1110-1115).

(13) Petition for Appeal (pp. 1116-1117).

(14) Assignment of Errors and Prayer for Reversal (pp. 1118-1123).

(15) Notice of Appeal (p. 1124).

(16) Order Allowing Appeal (p. 1125).

(17) Praecipe for transcript of the record (pp. 1-3).

(18) Notice of Serving Appeal Papers (pp. 1126-1127).

(19) Citation (p. 1128).

(20) Praecipe for Cross Appeal (p. 1129).

1167 (21) Notice of Cross Appeal (pp. 1130-1131).

(22) Notice of Serving Cross Appeal papers (p. 1132).

(23) Petition for Cross Appeal, Statement of Jurisdiction, Assignment of Errors, Prayer for Reversal (pp. 1133-1157).

(24) Order Allowing Cross Appeal (p. 1158).

(25) Order Staying Execution of Decree (p. 1159).



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(26) Citation on Cross Appeal (pp. 1160-1161).

(27) Certificate of the Clerk of the District Court (p. 1162).

(28) Stipulation (p. 1163).

(S) CHARLES FAHY,  
Charles Fahy,  
*Solicitor General,*

SAMUEL S. ISSEKS,  
Samuel S. Isseks,

*Special Assistant to the Attorney General,*

(S) JAMES C. WILSON,

James C. Wilson,

*Special Assistant to the Attorney General,*

*For the United States of America.*

This 14th day of January 1942.

1168 Service of the Foregoing Statement of Points to be Relied Upon, Designation of Parts of the Record Necessary For Consideration Thereof and receipt of a copy thereof, are acknowledged this 15th day of January 1942.

(S) FREDERICK S. DUNCAN,  
Frederick S. Duncan,  
*Attorney for Respondents.*

[File endorsement omitted.]

1169 In Supreme Court of the United States

October Term, 1941

Docket No. 856

*Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof*

(Filed Feb. 7, 1942)

Now come the appellants in the above-entitled cause and for their statement of the points on which they intend to rely in their appeal to this Court state the following:

1. The appellants hereby adopt all of the points contained in their assignment of errors numbers I to XLVIII inclusive heretofore filed herein and intend to rely in their appeal to this Court upon all of the points therein set forth.

2. In addition to the above, the appellants in their appeal  
1170 to this Court will rely upon the error of the District Court in denying the motion of the defendants to vacate and quash the service of the summons in this case and to dismiss the action

because the record shows that under the law none of the defendants herein is "transacting business" in the Southern District of New York within the purview of Section 12 of the Clayton Act (15 U. S. C. A. 22) or any provision of the Antitrust Laws of the United States so as to confer jurisdiction or venue upon the District Court.

3. The appellants herein further state that they accept and will rely upon the identical parts of the record set forth in the statement of points to be relied upon and designation of parts of the record necessary for consideration thereof heretofore filed in the case of United States of America, Appellant, versus The Univis Lens Company Inc., et al., Respondents, No. 855, October Term, 1941.

FREDERICK S. DUNCAN,  
Frederick S. Duncan,  
TOULMIN & TOULMIN,  
Toulmin & Toulmin,  
*Attorneys for Appellants Herein.*

H. A. TOULMIN, Jr.,  
H. A. Toulmin, Jr.

ROWAN A. GREER,

Rowan A. Greer,

JOHN M. MASON,

John M. Mason,

*Of Counsel for Appellants.*

February 6, 1942.

1171

ACKNOWLEDGMENT OF SERVICE

Service of the foregoing statement of points to be relied upon, and designation of parts of the record necessary for consideration thereof, and receipt of a copy thereof, are acknowledged this 6th day of February 1942.

CHARLES FAHY,  
*Solicitor General of the  
United States, Respondent.*

[File indorsement omitted.]

714 UNITED STATES VS. THE UNIVIS LENS CO., INC., ET AL.

1172 Supreme Court of the United States

No. 855, October Term, 1941

*Order noting probable jurisdiction*

February 2, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration and decision of this question.

1173 Supreme Court of the United States

No. 856, October Term, 1941

*Order noting probable jurisdiction.*

February 2, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration and decision of this question.

[Endorsement on cover:] File No. 46183, 46184. S. New York, D. C. U. S. Term No. 855. The United States of America, Appellant vs. The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Myer H. Stanley, G. F. Stanley, N. M. Stanley. Term No. 856. The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Meyer H. Stanley, G. F. Stanley, N. M. Stanley, Appellants vs. The United States of America. Filed January 9, 1942. Term No. 855 O. T. 1941, 856 O. T. 1941.







No. 855

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In the Supreme Court of the United States

OCTOBER TERM, 1941

THE UNITED STATES OF AMERICA, APPELLANT

v.

THE UNIVIS LENS COMPANY, INC., THE UNIVIS  
CORPORATION, JACK R. SILVERMAN, MYER H.  
STANLEY, G. F. STANLEY, N. M. STANLEY

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT AS TO JURISDICTION

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**IN THE DISTRICT COURT OF THE  
UNITED STATES**

**SOUTHERN DISTRICT OF NEW YORK**

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**Civil Action No. 10-392**

**UNITED STATES OF AMERICA, PLAINTIFF,**

**v.**

**THE UNIVIS LENS COMPANY, INC., ET AL.,  
DEFENDANTS**

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**STATEMENT OF JURISDICTION**

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause on November 25, 1941. A petition for appeal was filed on December 9, 1941, and is presented to the District Court herewith, December 9, 1941.

**JURISDICTION**

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36

(1)

Stat. 1167; 15 U. S. C., sec. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C., sec. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436; *Interstate Circuit, Inc. v. United States*, 306 U. S. 208; *Sugar Institute v. United States*, 297 U. S. 553; *Atlantic Cleaners and Dyers v. United States*, 286 U. S. 427.

#### STATUTES INVOLVED

The Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C., secs. 1 and 3):

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of

Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory



or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

#### THE ISSUES AND THE RULING BELOW

On September 16, 1940, the appellant filed its complaint, charging the defendants with violations of Sections 1 and 3 of the Sherman Act and praying that such violations be enjoined. The complaint alleges that The Univis Corporation and The Univis Lens Company, Inc., are closely related corporations with common officers and joint stock ownership. The Univis Corporation controls certain patents under which it licenses Univis Lens Company to manufacture, use, and vend bifocal lens blanks. These are the rough disks of glass from which finished bifocal lenses are processed. The Univis Lens Company agrees to pay a royalty of \$.50 per pair of lenses and to sell these blanks only to wholesalers and retailers licensed by The Univis Corporation.

The Univis Corporation issues royalty-free licenses to optical wholesalers to complete the manu-

facture of lens blanks purchased exclusively from The Univis Lens Company, and to use and vend the bifocal lenses finished from these lens blanks. The Univis Corporation issues a similar royalty-free license to purchase and to complete the manufacture of lens blanks and to use and vend the finished lenses, to a few large or so-called "finishing" retailers. These licenses require the wholesaler and finishing retailer licensees to sell at not less than prices fixed by The Univis Corporation and to customers designated by The Univis Corporation. The wholesaler licensee is required to sell only to "prescription retailers" licensed by The Univis Corporation, and the finishing retailer licensee is required to sell only to wearers for their personal use.

The Univis Corporation issues royalty-free licenses to "prescription retailers" to "fit" and to "prescribe" Univis bifocal lenses only to the wearers and at not less than prices fixed by The Univis Corporation.

Supplementing the price-fixing provisions of this licensing system, The Univis Lens Company has executed Fair Trade Act contracts with wholesaler and retailer licensees, fixing the minimum prices at which they can sell finished Univis bifocal lenses and requiring the contracting wholesaler to sell only to licensed retailers and the contracting retailer to sell only to the public.

The Univis Corporation has pursued a policy of refusing to license price cutters and of cancelling

the licenses of all wholesaler and retailer licensees who cut prices on Univis lenses or on the products of other manufacturers or who sell Univis lenses to customers other than those designated by The Univis Corporation.

The defendants make no attempt to justify their licensing restrictions upon the theory that the wholesaler and retailer licensees are agents of The Univis Corporation or of The Univis Lens Company. The Univis Lens Company sells Univis bifocal lens blanks to wholesaler and finishing retailer licensees located throughout the country. The revenue from these sales represents the entire pecuniary reward received by the defendants from their patents. The Univis Lens Company does not make finished Univis bifocal lenses.

The wholesaler licensee, after finishing a lens from a Univis bifocal lens blank, sells the finished lens to a prescription retailer licensee, who in turn sells this finished lens to the wearer. The finishing retailer processes the lens blank into a finished lens and sells it direct to the wearer.

The complaint charges that the contracts and agreements are illegal because they are the means whereby the defendants (1) fix the price, terms, and conditions of sale of lenses finished from lens blanks sold by the defendants, and designate the customers to whom the wholesaler and retailer licensees can sell these lenses; (2) regulate the prices charged by their wholesaler and retailer licensees

for products of other manufacturers; and (3) prevent wholesalers and retailers who do not subscribe and adhere to the trade restrictions imposed by the licenses above described from engaging in the distribution of Univis bifocal lenses.

On September 17, 1941, after a full hearing, the District Court for the Southern District of New York, rendered an opinion holding that the patents of The Univis Corporation cover the finished lens processed by the wholesaler or finishing retailer from the Univis lens blank, and therefore that the contracts between The Univis Corporation and its wholesaler and finishing retailer licensees are valid patent licenses. The District Court held that the restrictions fixing prices and designating customers in these licenses are legal upon the authority of *United States v. General Electric Company*, 272 U. S. 476.

On the other hand, the District Court held that, since the wholesaler sells the patented finished lens, the licenses to retailers are invalid because they represent an attempt by The Univis Corporation to control the resale of a patented product. Further, the Court held that the Miller-Tydings amendment to the Sherman Act, 15 Stat. 693, permits the execution of minimum price contracts only in the resale of the same article, and hence that the contracts in this case are invalid because they represent an attempt by the manufacturer of a lens

blank, an incomplete article, to fix the sales price of the finished lens, a complete article.

The Court also found that the defendants had induced certain of their wholesaler licensees to threaten to boycott the products of Titmus Optical Company if it produced bifocal lenses competitive with those made by Univis Lens Company. The Court held that the patent license agreement between The Univis Corporation and its wholesaler licensees does not justify such activities.

The Court granted a permanent injunction against the continuance by the defendants (1) of their licenses to prescription retailers; (2) of their resale price maintenance contracts; and (3) of engaging in trade practices such as those directed against Titmus Optical Company. The Court denied injunctive relief against continuance of the wholesaler and finishing retailer licenses.

#### THE QUESTIONS ARE SUBSTANTIAL

The appellant believes that the District Court erred in holding that the contracts between The Univis Corporation and the wholesaler and finishing retailer licensees are valid patent license agreements. Even assuming that the contracts are valid, however, the Court erred in its conclusion that the decision of the Supreme Court in *United States v. General Electric Company*, 272 U. S. 476, countenances the formation of the licensing scheme here involved. The contracts in the *General Electric* case were justified on the ground that they pro-



ected the patentee from competition. In the present case the defendants do not sell finished bifocal lenses and the purpose of the contracts is to protect the licensees from competition among themselves. In the *General Electric* case the patentee received a substantial pecuniary return in the form of royalty for the use of the patent. In this case, as in *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, the defendants receive their full return for their patents from the sale of the bifocal lens blanks by Univis Lens Company.

Furthermore, unlike the *General Electric* case, the defendants here sell a bifocal lens blank the only use of which is that it may be processed into a finished bifocal lens. In view of their sale of the blank with knowledge that it is to be processed into a finished bifocal lens, it is clear the defendants cannot sue the purchaser for patent infringement in finishing the lens and devoting the lens blank to its natural and only use. Since they lack power to control the finishing of the lens, the defendants cannot impose restrictions upon the sale and distribution of the finished lens.

A further ground of distinction from the *General Electric* case is that the defendants here have endeavored to use their license agreements to control the prices charged for the products of others and to prevent all wholesalers and retailers not licensed by them from dealing in Univis bifocal lenses.

The *General Electric* case, we submit, does not enlarge the scope of the patent laws to a point where they repeal the anti-trust laws as to all who calls themselves patent manufacturing licensees. If that decision, properly construed, holds that the licensing scheme here involved is beyond the reach of the anti-trust laws, the decision should be reconsidered. The issue in any case is one of substance and calls for a review by the Supreme Court.

Respectfully submitted.

(sd.) / CHARLES FAHY,  
Charles Fahy,  
*Acting Solicitor General.*

(sd.) / SAMUEL S. ISSEKS,  
Samuel S. Isseks,  
*Special Assistant to the Attorney General.*

(sd.) / J. C. WILSON,  
James C. Wilson,  
*Special Assistant to the Attorney General.*

Dated DECEMBER 8, 1941.

**United States District Court, Southern  
District of New York**

Civil, No. 10-392, September 17, 1941

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS CO., ET AL., DEFENDANTS

Appearances: Robert H. Jackson, Esquire, Attorney General of the United States, Attorney for Plaintiff. Samuel S. Isseks, Esquire, Special Assistant to the Attorney General. Stanley E. Disney, Esquire, Irving B. Glickfeld, Esquire, John E. McCracken, Esquire, George L. Derr, Esquire, Special Attorneys. Frederick S. Duncan, Esquire, Toulmin & Toulmin, Esquires, Attorneys for Defendants. Frederick S. Duncan, Esquire, H. A. Toulmin, Esquire, H. A. Toulmin, Jr., Esquire, Rowan A. Greer, Esquire, of counsel.

GALSTON, D. J.:

The complaint charges violations of Secs. 1 and 3 of the Sherman Anti-Trust Act and alleges that the Univis Lens Co., Inc. (which will hereafter be referred to as the Lens Company), manufactures bifocal lenses pursuant to an unlawful combination and conspiracy in which the Univis Corporation

is accused of having unlawfully set up a system of price control through the issuance of licenses to the Lens Company and others and by means of so-called Fair Trade agreements to certain wholesalers and retailers; that such lenses are covered by patents owned by the Univis Corporation and that the Lens Company owns a majority of the stock and controls the activities of the Univis Corporation. The individuals named as defendants are officers in both companies.

It is alleged that the conspiracy to restrain interstate commerce in bifocal lenses consisted in combining

(1) to designate, and select, according to certain arbitrary rules and regulations, wholesalers and retailers to handle and deal in bifocal lenses manufactured by defendant Univis Lens Company;

(2) to sell such bifocal lenses only to such designated and selected wholesalers and retailers;

(3) to restrain such wholesalers and retailers from selling to other wholesalers and retailers not so selected; and

(4) to fix uniform, arbitrary, and unreasonable prices at which such wholesalers and retailers could resell such bifocal lenses.

The challenged plan adopted by the defendants involved three types of licenses to control all stages of the marketing of Univis bifocal lenses, through licenses to wholesalers, to retailers with facilities

for finishing rough or semifinished bifocal lenses, and to prescription licensees, i. e. retailers, with no finishing equipment. By these means, so the Government contends, the defendants maintain a complete control of the marketing of Univis bifocal lenses including the fixing of minimum resale prices to the purchasing public. It is asserted that they refuse to issue licenses to wholesalers and retailers who are price cutters or who otherwise engage in business practices of a nature disapproved by the defendants; also that the Lens Company sells the rough lens blanks only to Univis licensees or to consumers. Accordingly the Government seeks to have the contracts and combinations and conspiracies in restraint of interstate commerce decreed unlawful and the defendants enjoined.

The defendants admit that the Lens Company and the Univis Corporation to all intents and purposes are the same and that the individual defendants have owned or control both corporations. The Univis Corporation avers that it has consistently followed an "open end" license policy by which all licensees of the same class are charged the same license fee and have the same prices fixed for performing the same manufacturing service; and that the licenses are open to all qualified licensees. The basis of its policy is the maintenance of highest standards of quality, service, and performance by each licensee at each stage of the



manufacturing process. Such policy is founded upon the peculiar nature of the business of manufacturing, prescribing, fitting, and distributing eyeglass lenses in a series of successive steps, by different types of manufacturing establishments at different distances from the customer. It is said that the "blanks" must be manufactured out of blocks of glass in which the near vision inserts are fused to form the same fabricated product from which the bifocal lenses are ultimately to be made; also that the lens blank, at such stage of manufacture, is not useful as an eyeglass lens and must be subjected to manufacturing processes by other licensees and finally fitted to the eyes of the wearer through a suitable examination of the eyes. As a matter of practice the retailer licensee who is in direct contact with the customer is alleged to participate in the manufacturing steps of fitting the lenses in accordance with the prescription of the lens in that he must determine the shape, the centering, and the positioning thereof on the face of the wearer and the mounting of the lens in a frame in order to give the maximum vision and comfort to the wearer. The prescription for grinding is forwarded to a wholesaler to whom the lens blank has been sold by the Lens Company. The lenses when completed are then in turn delivered to the finishing retailer who adjusts and fits them to the eyes of the wearer.

On the question of price the answer alleges that the wholesaler purchases the manufactured rough Univis blank generally for \$3.25. The process practiced by the wholesaler in following the prescription received from an optometrist, dispenser or ophthalmologist entails great accuracy and requires, so it is alleged, from three and a half to four hours for each pair of lenses. The wholesaler receives an average gross profit of approximately \$3.70 for a pair of lenses. The total average margin of gross profit for the retailer is stated to be about \$9 per pair of lenses.

Specifically answering the complaint the defendants deny any violations of the Sherman Act and aver that until the manufacture of the products under the patents and trade-marks is completed and delivered to the ultimate wearer of the lenses there has not passed in interstate commerce any such thing as a bifocal lens; that the blanks are not bifocal eyeglass lenses; that what passes from the Lens Company to the wholesaler is a blank, not an eyeglass lens and that there is but one sale of the completed lens and that occurs when the retailer sells it to the customer, the particular user.

The Government's proof establishes that the Lens Company manufactures bifocal blanks under license from the Univis Corporation. The license between the two corporations refers to other contracts which are not before the court and accordingly is not in itself a complete instrument. It

does appear that the Univis Corporation is to receive on all lenses manufactured in the United States and sold in the United States by the Lens Company a royalty of \$.50 per pair to be paid by the Lens Company to the Univis Corporation. The Lens Company is to sell to none other than those appearing from time to time on an approved list of prescription purchasers to be submitted by the Univis Corporation. On the whole the instrument affords very unsatisfactory proof of the terms and conditions of the agreement between the Univis Corporation and the Lens Company.

It is important at this stage to understand what a lens blank is. Silverman's definition, and it is not contradicted in the case, is that such a blank is a rough piece of glass or a partly manufactured piece of glass. As manufactured and distributed by the Lens Company the lens blank consists of reading and distance segments; and in the case of trifocal lenses a reading segment, distance segment, and an intermediate segment. The great bulk of the business done in the manufacture and distribution of the lens blanks by the Lens Company is of the bifocal character. The Lens Company sells these lens blanks to licensed distributors known as wholesalers; also to grinding finishing licensees and to dispensing opticians who have complete grinding laboratories. In other words, the Lens Company has two types of customers—wholesalers and retailers. It is of im-

portance to note that the lens blank sold by the Lens Company to either wholesalers or retailers could be used for no other purpose than as a lens blank to be made into a finished optical bifocal lens. The Lens Company employs servicemen to educate the lens grinders employed by the licensees, for these Univis lens blanks are computed on a series of corrective curves, i. e., a series of curves for each individual prescription to the end that the widest angle of vision may be obtained by the consumer. Such curves have been the subject of computation by the technical department of the Lens Company, are charted, and the chart discloses the curve to be ground on every prescription. In addition special tools are furnished to the wholesaler or finishing retailer.

It is important to distinguish between the finishing retailer and the prescription retailer. The former has a complete grinding and finishing laboratory comparable to that of the wholesaler and performs the same functions, the same grinding and finishing operations, as does a wholesaler and supplies the lenses through the stages of fitting and designing directly to the public.

A prescription retailer, if he is an optometrist, examines the patient's eyes, prescribes the lens, designs the size, the shape, and contour thereof to conform with the patient's peculiar facial characteristics; designs the size, heights, and positioning

of the reading segment to conform to the patient's particular vocation or other personal requirements. These specifications he forwards to a laboratory for completion. On receipt of the completed lenses from the laboratory he fits the lenses to the patient's face.

To determine whether the licensing scheme of the defendants is within the monopoly of the patent grant it is necessary critically to examine the terms of these licenses.

Concededly the Lens Company has the right to manufacture lens blanks and to sell them as restricted by the Univis Company only to those who are either licensed wholesalers or licensed retailers. There can be no doubt that the owner of a patent has the right to license another to make and sell the patented article only to purchasers approved or designated by the licensor.

In the second stage of the licensing plan, that which is manufactured by the Lens Company passes by sale to such designated or approved purchasers as have been licensed by the Univis Corporation to complete the manufacturing under the patents, i. e. to convert the lens blank into a lens. But if the thing sold by the Lens Company is the patented article and that article becomes the subject of resale, the resale price cannot be controlled by the licensor, for the article would pass from the dominion of the patent. *Ethyl Gasoline Corporation v. United States*, 309 U. S. 436; *Adams v.*



*Burke*, 17 Wall. 453; *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339; *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373; *Bauer & Cie. v. O'Donnell*, 229 U. S. 1; *Straus v. Victor Talking Machine Co.*, 243 U. S. 490; *Boston Store v. American Graphophone Co.*, 246 U. S. 8.

It is on this point that contention arises in respect to the scope of the patents. The defendants take the position that the term "lens" as used in the patents, refers not to the rough blanks but to the completed article usable for the optical purposes by the wearer. For the Government to assert otherwise, as it now does, is to contradict the allegation of its complaint. As there defined, the Government says:

The term "lens" \* \* \* wherever used in this complaint, means a lens manufactured of glass to give normal vision to the user thereof, as in all types of spectacles and eyeglasses \* \* \*

Such definition conforms with the defendants' position. Nor is there proof in the case that without further processing the lens blanks manufactured and sold by the Lens Corporation could be used as lenses. They do not effect normal vision.

A reading of the patents in suit confirms this view. Patent No. 1,632,208 is for a lens. The invention relates to lenses that are to be used with spectacles and the like. The patentees state that in the manufacture of fused lenses a circular plate

of glass of greater refractive index than that of the main lens is fused into the main lens, that it is found that the lower part of the plate is hardly if at all used for reading purposes, and that such lower portion prevents the wearer from seeing the ground. The patentees also observe that the upper portion of the plate is not used in reading. Therefore, it is suggested that a plate of a plurality of pieces of different refractive indices be formed, of which one is to be a reading portion. In this patent it would appear that that which is referred to as the circular plate of glass is a lens blank and not a lens, and that the claims of the patent refer to completed lenses. The rough lens blank made by the Lens Company would not fall within any of the five claims of this patent.

Patent No. 1,845,940 to Stanley also is entitled an invention for a lens. The term "lens" refers to an article in its finished state for use by the wearer. Of the ten claims there is only one which defines but a segment of the complete lens. Claim 7 covers an article of manufacture for use "as a short distance insert of a crown glass major lens comprising a circular body formed of a central portion of flint glass \* \* \*;" but the article thus defined is not a rough lens blank.

Patent No. 1,876,497 to Hancock is for a trifocal lens. The five claims of the patent all define a lens for use as such and there is nothing in the specifications which would narrow the scope to a rough lens blank.

The claims of patent No. 1,879,769 to Silverman cover only a method of producing a lens to eliminate prismatic imbalance.

Patent No. 1,899,777 to Stanley relates to bifocal lenses. The inventor states the objects of his invention are to provide a bifocal lens blank and another to provide a bifocal lens, thus indicating the difference between a lens blank and a lens. After describing the processing of the lens he says:

the resulting lens of my invention has the very substantial advantage of wide lateral, long distance vision on either side thereof, easy long distance vision above the flat top of the insert, a very deep reading area with sufficient place below this reading area for long distance vision as in walking upstairs, etc.

Thus the fifteen claims of that patent all cover a finished lens.

Patent No. 1,932,400 to Culver relates to improvements in lenses, particularly fused bifocal lenses. The main object of the invention is to provide a new strong, convex or cataract fused, bifocal lens. The eleven claims relate to a finished lens adapted for use as a lens.

Patent No. 2,030,968 to Culver is for an invention relating to ophthalmic lenses. This too is for a finished lens ready for use. The specification describes a method by which the product is patented.

Reissue patent No. 19,142 to Hancock is of original patent No. 1,876,497, heretofore considered. It defines a finished trifocal lens.

Patent No. 2,183,885 is for a multifocal lens, the two claims of which define a complete lens.

The remaining patents owned or controlled by the defendants, with the exception of one covering a polishing machine, and two for telescopic bifocal lenses which are in no way related to the subject matter of this cause, relate to methods for making lenses.

Hence it must be concluded that what the Lens Company manufactures and sells to the wholesalers or the finishing retailers is not a lens. Thus the patent monopoly is not exhausted by the manufacturing operations of the Lens Company. The monopoly is not exhausted until the article is complete, according to the terms of the several patents. Moreover, the sale by the wholesaler of its product and of the finishing retailer of its product is not the article in the state of manufacture purchased by them from the Lens Company. Within the patent monopoly these licensees carry on the manufacture of a somewhat "raw" product to a state of completion. Hence what they sell is not a resale of the article purchased from the Lens Company. Such sale does not fall within the ban of those authorities which discountenance resales as being beyond the scope of the patent monopoly.

Nor is the control by the Univis Corporation of the manufacture and sale of the lens blank beyond the monopoly of its patent grants. It would appear that anyone other than a licensee, either mak-

ing or selling a blank having all of the patented elements in combination, and which has no use except to be converted into a finished lens, would be making an article of manufacture specially designed and intended for the purpose of being ultimately made into the finished eyeglass lens, as covered by claims of the patents of the Univis Corporation. That would be an act of contributory infringement. *Leeds & Catlin v. Victor Talking Machine*, 213 U. S. 325. The situation is not one in which the patentee seeks to control an unpatented element of a combination and so differs from *Carbice Corporation v. American Patents Development Corporation*, 233 U. S. 27. Nor does it fall within the condemnation of *Ethyl Gasoline Corporation v. United States*, 309 U. S. 436. Here the owner of the patents neither manufactures nor sells a product covered by the patents. The rough lens blank made by the Lens Company as a licensee is not a standard article of commerce. The Univis Corporation, by its system of licenses to initial and final manufacturers, has established its own system of manufacture and seeks the reward of the invention defined in the patents and not in any dissociated element in the patents. Neither *Leitch Mfg. Co. v. Barber Co.*, 302 U. S. 458, cited by the Government, nor *American Lecithin Co. v. Warfield Co.*, 105 F. (2d) 207, is in point.

The license to the wholesaler or distributor recites that the wholesaler or distributor "is desirous



of being placed upon the approved list to purchase from the approved manufacturing licensee of the Univis Corporation rough lens blanks embodying one or more of said inventions \* \* \* and of completing the manufacture thereof according to suitable prescriptions for the use of the purchaser who will wear the resulting bifocal eyeglass lenses." The license is non-exclusive, non-assignable, and conveys the revocable right "to complete the manufacture of Univis bifocal lenses \* \* \* and to sell the said finished Univis bifocal lenses made from said blanks only in accordance with the terms and conditions set forth herein and as may be established from time to time pursuant to this contract \* \* \*."

The license stipulates that—

It is further agreed between the parties, as the essence of this contract, that Company (i. e. the licensee) will sell the Univis bifocal eyeglass lenses \* \* \* only to such persons, firms, corporations \* \* \* designated from time to time by the Univis Corporation as being upon an approved list to purchase from the — Company (i. e. the licensee) \* \* \* and agree to sell no blanks as blanks except to licensed finishing licensees whose names appear as such on the approved list of the Univis Corporation.

The licensee "agrees to sell Univis bifocal lenses \* \* \* at the present prescription schedule of prices established by the Univis Corpora-

tion; and agrees to furnish partly finished Univis lenses \* \* \* at the present finishing licensee schedule of prices established by the Univis Corporation \* \* \*.”

This license likewise appears to be within the scope of the patent monopoly. The right to complete the manufacture of an article falls within the control of dominion of the patents of the Univis Corporation. As has been indicated, up to now there has been no resale violation, and since the holder of a patent may exclude all others from making, using, or selling the patented invention, he is likewise free to designate those who may exercise any or all rights conferred by the patent. Thus he may arbitrarily carve his monopoly into as many segments as he elects by giving territorial rights to some, manufacturing rights to others, and the right of use to still others. He may establish his own royalties. He may fix prices at which manufacturing licensees are to sell their products and limit the sale thereof to designated purchasers. See *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436; *United States v. United Shoe Machinery Company*, 247 U. S. 32; *Paper Bag Patent Case*, 210 U. S. 405; *Bement v. National Harrow Co.*, 186 U. S. 70; *Eastern States Retail Lumber Dealers Association v. U. S.*, 234 U. S. 600; *U. S. v. Trans-Missouri Freight Association*, 186 U. S. 290; *Federal Trade Commission v. Beech-Nut Co.*, 257 U. S. 441; *U. S. v. General Electric Co.*, 272 U. S. 476; *U. S. v. Colgate & Co.*, 250 U. S. 300.

Nor does the owner of a patent violate the Sherman Anti-Trust Law by fixing prices in license agreements under which articles may be manufactured and sold by the licensee. *U. S. v. General Electric Co.*, 272 U. S. 476; *Bement v. National Harrow Co.*, *supra*; *U. S. v. United Shoe Machinery Co.*, *supra*; *Ethyl Gasoline Co. v. U. S.*, *supra*; *General Pictures Co. v. Electric Co.*, 305 U. S. 124; *Appalachian Coals, Inc., et al. v. U. S.*, 288 U. S. 344.

In *U. S. v. General Electric Co.*, 272 U. S. 476, at 491, Mr. Justice Taft, quoting from *Bement v. National Harrow Co.*, said:

"The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts. The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal."

In the same opinion Mr. Justice Taft observes that it has been argued that *Bement v. National Harrow Co.* has been in effect overruled, and after a consideration of *Henry v. Dick Co.*, 224 U. S. 1; *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502, and *Heaton-Peninsula Button-Fastener Co. v. Eureka Specialty Co.*, 77 Fed. 288, he says:

The overruling of the Dick case and the disapproval of the Button-Fastener case by

the Motion Picture Film case did not carry with it the overruling of *Bement v. Harrow Company*. The Button-Fastener case was cited in the case of *Bement v. Harrow Company* to sustain the decision there by what was an a fortiori argument. The ruling in the former case was much broader than was needed for the decision in the latter. The price at which a patented article sells is certainly a circumstance having a more direct relation, and is more germane to the rights of the patentee, than the unpatented material with which the patented article may be used. Indeed, as already said, price fixing is usually the essence of that which secures proper reward to the patentee.

Thus it must be concluded that price fixing agreements in respect to patented articles or methods, as the Government contends, are not illegal per se. So that up to the time that there is no resale of the patented product, the agreements between licensor and licensee cover a field of valid control. It is only after that point is reached that price fixing, under a patent license system, becomes unlawful. *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436. Patent control presents a condition which makes such cases as *U. S. v. Socony-Vacuum Oil Co.*, 310 U. S. 150; *U. S. v. American Tobacco Co.*, 221 U. S. 106; *Apex Hosiery Co. v. Leader*, 310 U. S. 469 inapplicable. Moreover the use of the license system to exclude persons from the market because they cut prices is not an abuse of the patent privilege.

*U. S. v. Colgate & Co.*, 250 U. S. 300. That right is expressly recognized in the Ethyl case and the effort of the Government to find analogy between the factual situation therein and the case at bar must fail. In the former, as Mr. Justice Stone observes, the scene is one "in which appellant has established the marketing of the patented fuel in vast amounts on a nation-wide scale, through 11,000 jobbers, and at the same time, by the leverage of its licensing contracts, resting on the fulcrum of its patents, it has built up a combination capable of use and actually used as a means of controlling jobbers' prices and suppressing competition among them."

The Univis Corporation Finishing License contract in essential respects is similar to the Distributor Contract and its legality responds similarly to the same tests. This form of contract is valid as being within the monopoly control of the patents.

The so-called "franchise to prescribe and fit Univis lenses" seeks quite a different form of control. It is memorandum of agreement made between a "distributor" and one designated as the "representative." The appositeness of the term is not explained.

The "representative" agrees to maintain minimum retail prices to insure high standards of manufacture, use, and sale of the product. The record shows that this "representative" performs no manufacturing operation. He examines his patient or customer and writes a specification which



he forwards in the form of a purchase order to the wholesaler or distributor for the manufacture of the completed lenses. He receives a patented article to which he has the full legal title. At that point the patent-monopoly is exhausted. The owner of the patent, the Univis Corporation, no longer may lawfully control the resale price of that finished article. To contend that the "representative" has to adjust the finished lenses to the nose of the wearer by taking a pair of pliers and manipulating the nose clips or the ear pieces is not to bring such activities of the "representative" within the control of the patent grant. He has added nothing to the patented product. *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436; *Adams v. Burke*, 17 Wall. 453; *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339; *Dr. Miles Co. v. Park & Sons Co.*, 220 U. S. 373; *Bauer & Cie. v. O'Donnell*, 229 U. S. 1; *Straus v. Victor Talking Machine Co.*, 243 U. S. 490; *Boston Store v. American Graphophone Co.*, 246 U. S. 8.

It must be concluded, therefore, that the so-called franchise agreement with the "representative" is illegal and should be stricken down.

Evidence of further attempt to restrain competition in interstate commerce is urged by the Government in the fair trade agreements which the Univis Lens Company makes with the Wholesaler, Finishing Retailer, and Retailer. The defendant's position is that these agreements are within the Miller-Tydings Amendment of August 17, 1930

(C 690, Title VIII, 50 Stat. 693, 15 U. S. C. A. 1) to Sec. 1 of the Sherman Anti-Trust Act. That amendment in part provides:

That nothing herein contained shall render illegal contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity, and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intra-state transactions, under any statute, law, or public policy now or hereafter in effect in any state, territory, or the District of Columbia, in which such resale is to be made \* \* \*

The agreements designate the Lens Company as the "Manufacturer." The Manufacturer is described as engaged in the production and distribution of eyeglass lenses which are distributed and sold under the trade-marks of the Manufacturer "who is the owner thereof" and particularly under the trademark "Univis," and which eyeglass lenses are stated to be in fair and open competition with lenses of the same class produced by others.

Further recitals declare that these trade-marks and the shapes of insert in the lenses having a straight top, constitute a valuable part of the good will of the business of the Manufacturer, enabling

the public to identify the eyeglasses of the Manufacturer and Wholesaler (or of the Manufacturer and Retailer) "as being the product of the scientific research, manufacturing skill, inspection, and standards of workmanship of the Manufacturer and Wholesaler" or the Manufacturer and the Retailer as the case may be.

The agreements state that the Wholesaler, the Retailer, and the Finishing Retailer are all engaged in the sale of eyeglass lenses under the trade-mark "Univis," with a straight top insert "as supplied to it by the Manufacturer."

The wholesaler and the Finishing Retailer agree that they will not offer for sale such eyeglass lenses at less than the minimum resale prices then in effect for such commodities as established hereunder from time to time by the Manufacturer. In the agreement with the Retailer, he too undertakes that he will not offer for sale or sell such eyeglass lenses at less than the minimum resale prices as fixed by the Manufacturer.

There have been offered in evidence two certificates of trade-mark registration to the Lens Company. The first trade-mark, No. 235,817, covers the "Univis" and recites that the mark has been continuously used for ophthalmic lenses and applied to said goods in applicant's business since

<sup>1</sup> In the agreement with the Finishing Retailer the language is "as supplied to it by the Manufacturer or Wholesaler."

January 20, 1927. The second trade-mark is for the name "Universal Visibility," certificate No. 250,138, but apparently is not involved herein.

Though the Government has not challenged the ownership of the trade-mark "Univis," a consideration of the record in this case leads to speculation as to such ownership, for these fair trade agreements designate the Lens Company as the Manufacturer of the lenses. But it will be recalled that the contention of the defendants is that the Lens Company manufactures lens blanks. These two positions are inconsistent. Silverman, to the question "What is the business of the Univis Lens Company?" answered: "It is the manufacturing licensee that manufactures and distributes Univis Lens blanks; the complete multifocal lens blanks."

It is true that to the next question, "But it manufactures and distributes only lens blanks?" he answered: "That would not be entirely accurate. There are a few lenses, special lenses, that are ordered occasionally. That would be 99.9% of its work, but perhaps there is  $\frac{1}{10}$  of 1% that might be finished lenses on special order for certain customers."

In consequence it would seem that the term "Univis" as applied to eyeglass lenses, i. e., the finished lenses, identifies the product of the Wholesaler or Finishing Retailer and that the description of the Lens Company as the "Manufacturer" is not justified by its operations. The manufactur-

ing participation therein by the Lens Company consisted only in furnishing the Wholesaler or the Finishing Retailer with the rough lens blank, and the product which is sold by the Wholesaler and the Finishing Retailer is the article to which the trade-mark applies. As between the Wholesaler, or the Finishing Retailer, the Lens Company is certainly not the Manufacturer of the lens as defined in the fair trade agreements. A fortiori, the Lens Company is not the Manufacturer of the lens purchased by the Retailer or the wholesaler.

Certainly so far as the resale by the Retailer is concerned, he sells no commodity which bears, or the container of which bears, the trade-mark "of the producer" of such commodity. What he sells is a commodity of the Distributor or Wholesaler. But the fair-trade agreements in evidence in this case are not between the Wholesaler or Distributor and the Retailer, and I can see no applicability of the Miller-Tydings Amendment to the resale activities of the Retailer. This case is not unlike *Mallinson Fabrics Corp. et al. v. R. H. Macy & Co.*, 14 N. Y. S. 2, 203. In that case the New York statute relating to the fair-trade agreements was considered. The action was brought by the manufacturer of fabrics sold under the name "Mallinson's Pure Silk Pussy Willow" and by a co-plaintiff, a dress manufacturer. The plaintiffs sought to restrain the defendant from advertising or offering for sale or selling dresses under the trade-



mark at a price lower than that fixed by the plaintiffs. The defendant's "Pussy Willow" dresses were not made by Mallinson, nor indeed were they those of Sie-Gel. They were made by an unnamed manufacturer. The court observed:

As I perceive it, this dress is not a "commodity" produced or owned "by either plaintiff."

The attempt of the Lens Company, under the guise of the protection of the statute, to control the resale of that which it does not manufacture, is ineffectual. For the same reason its "Fair Trade" agreements with "Wholesaler" and "Finishing Retailer" are likewise unenforceable. The latter do not resell the product or commodity of the Lens Company.

There is an isolated instance disclosed in the record wherein, in the effort to maintain prices and to exercise an indirect control of optical goods manufactured by others, the defendants departed from the protection of their patents. It appeared that Titmus Optical Company was about to manufacture bifocal lenses alleged to be covered by the claims of the Univis patents. The Univis Corporation notified the Titmus Optical Company that it would be sued for patent infringement. But it also notified its own licensees and by such pressure kept the Titmus Optical Company out of the field by causing directly or indirectly Univis licensees to cancel orders for optical goods theretofore placed

by them with the Titmus Company. Johnstone Optical Company, one of the Univis licensees, sent a copy of its telegram of cancellation of a Titmus order to the Univis Lens Company, and from the Univis letter of December 19th, in reply, the nature of a concerted effort of the defendants can be spelled out. The letter recites:

DEAR MR. JOHNSTONE: The type of action exemplified by the copy of the telegram received from you is indeed appreciated at this end. It is, in effect, employing the use of a patent weapon which the better class jobber has to protect his vital interests. I trust that the numerous other jobbers throughout the United States that have expressed their readiness to adopt similar measures will act just as quickly and effectively to the end that a very valuable program will be preserved.

That other Univis licensees expressed their cooperation is shown in the letters of John S. Milam Optical Company, of January 8, 1940; of the J. E. Limeburner Co., of January 8, 1940; of the Reese Optical Company, Inc., of January 9, 1940; in the office memorandum relating to the Rooney Optical Company, of January 10, 1940; also by the letter of Max Zadek, Inc., of January 10, 1940, and others. Such practices are not countenanced by the patent monopoly and must be regarded as an abuse thereof. It is true that the *Titmus* case is but an isolated instance and it may be doubted whether the proof

is of sufficient weight to justify the conclusion that in and of itself it amounts to a violation of the anti-trust acts.

It must also be observed that there is no proof that the defendants exercise among themselves or by combination with others a control of all bifocal eyeglass lenses. Such lenses are produced by other manufacturers and known under the names "Ful-Vue," "Panoptic," "Wide-Sight," "Ultex," and "Kryptok." There is no evidence of an agreement among the manufacturers of these lenses with the defendants to control prices or otherwise. The licensees of the defendants are not required to deal only in Univis products and the record establishes that the percentage of Univis bifocal lenses sold by the Univis licensees, as compared to other bifocal lenses sold by them, is only between five and six percent. Moreover the Univis Corporation has licensed only about fifty percent of the trade. Apparently then the defendants control but two and a half percent of the total volume of business done in bifocal eyeglass lenses. On its face such a small percent would not seem to be an unreasonable restraint of trade. *Standard Oil Co. v. United States*, 283 U. S. 163.

Yet the Government, relying on *United States v. Socony Vacuum Oil Co.*, 310 U. S. 150; *Aper Hosiery v. Leader*, 310 U. S. 469; *Montague & Co. v. Lowry*, 193 U. S. 38; *O'Brien v. United*

*States*, 290 Fed. 185 (C. C. A. 6, 1923); *Vandell v. United States*, 6 F. (2d) 188 (C. C. A. 2, 1925); *Hicks v. Bekins Moving & Storage Co.*, 87 F. (2d) 583 (C. C. A. 9, 1937); *Buyer v. Guillan*, 271 Fed. 65 (C. C. A. 2, 1921); *United States v. International Fur Workers Union*, 100 F. (2d) 541 (C. C. A. 2, 1938); *Oxford Varnish Corporation v. Ault & Wiborg Corporation*, 83 F. (2d) 764 (C. C. A. 6, 1936), contends that any tampering with prices, even though the members of the price fixing group are in no position to control the market—to the extent that they raise, lower, or stabilize prices, nevertheless directly interferes with the free play of market forces. The distinction between *Standard Oil Company v. United States*, 283 U. S. 163, and the foregoing group of cases, is that the former case turned on the validity of patent pooling agreements and whether they created monopoly; whereas in the cases cited by the Government no patent situation was involved.

But in the *Standard Oil* case, the court held the patent pooling and licensing legal; whereas, as has been indicated hereinbefore, the following criticisms must be made of defendants' practices in attempting to extend their control of prices beyond the monopoly of their patents:

1. The prescription license is not lawful.
2. The fair trade agreements are not lawful.
3. The concerted effort of defendants and their licensees to interfere with the business of the

Titmus Optical Company is not within the patent control.

Do such violations of law constitute unreasonable restraint of interstate trade and commerce in violation of Secs. 1 and 3 of the Sherman Anti Trust Act? It is at this point that *United States v. Socony Vacuum Oil Co.*, 310 U. S. 150 and related cases are wholly pertinent, for the two defendant corporations have attempted to establish a monopoly in the sale of Univis bifocal lenses beyond the patent control, and should be restrained. The Government is entitled to a decree, limited, however, to the extent hereinbefore indicated of declaring invalid the prescription license and unfair trade-mark agreements and restraining the defendants from the exercise of such activities as were proved in the Titmus Optical Company matter.

Submit findings of fact and conclusions of law in conformity with the foregoing opinion.

(Signed) C. G. GALSTON, U. S. D. J.



**United States District Court, Southern  
District of New York**

Civ. 10-392

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE UNIVIS LENS COMPANY, INC., ET AL.,  
DEFENDANTS

**MEMORANDUM**

COXE, D. J.:

It is clear from the affidavits submitted on this motion that the corporate defendants are "transacting business" in the Southern District; that is all that is required to sustain the venue here under Section 12 of the Clayton Act (15 U. S. C. A. 22). *Eastman Co. v. Southern Photo Co.*, 273 U. S. 359; *Hansen Packing Company v. Armour Co.*, 16 F. Supp. 784; *Sure-Fit Products Co. v. Fry Products, Inc.*, 23 F. Supp. 610.

The motion of the defendants to quash the service is denied.

FEBRUARY 3, 1941.

(Sgd.) ALFRED C. COXE, U. S. D. J.

(30)



Nos. 855, 856

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*In the Supreme Court of the United States*

OCTOBER TERM, 1941

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THE UNITED STATES OF AMERICA, APPELLANT

THE UNIVIS LENS COMPANY, INC., ET AL.

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THE UNIVIS LENS COMPANY, INC., ET AL., APPELLANTS

THE UNITED STATES OF AMERICA

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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BRIEF FOR THE UNITED STATES

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**In the Supreme Court of the United States**

OCTOBER TERM, 1941

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No. 855

THE UNITED STATES OF AMERICA, APPELLANT

v.

THE UNIVIS LENS COMPANY, INC., ET AL.

---

No. 856

THE UNIVIS LENS COMPANY, INC., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

---

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

---

BRIEF FOR THE UNITED STATES

---

OPINIONS BELOW

The opinion of the District Court (R. 655) upon the merits of the case is reported in 40 F. Supp. 258. An earlier opinion of the District Court (R. 45) holding that the appellees in No. 855 (who are the cross-appellants in No. 856, and who are here-

inafter called "appellees") are subject to its jurisdiction is reported in 37 F. Supp. 459.

#### JURISDICTION

The final decree of the District Court was entered on November 25, 1941 (R. 683). Petition for appeal was filed on December 8, 1941, and the appeal was allowed on the same day (R. 687, 691). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 15 U. S. C. § 29) and Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. § 345). Probable jurisdiction was noted on February 2, 1942.

#### QUESTIONS PRESENTED

Appellee Univis Corporation owns patents relating to an improved type of bifocal lens. It licenses appellee Univis Lens Company to manufacture and sell lens blanks only to licensed wholesalers and finishing retailers. Univis Corporation licenses wholesalers and finishing retailers to finish the blanks and sell the finished bifocal lenses to designated customers or classes of customers at prices fixed by Univis Corporation. Univis Corporation also licenses prescription retailers who purchase finished lenses from licensed wholesalers, and requires them to sell at fixed prices only to consumers. Appellees license only those wholesalers and retailers whose trade practices indicate that they will adhere to the prices and policies deter-



mined by appellees. This licensing system is supplemented by so-called "fair trade contracts" between Univis Lens Company and the licensees, fixing minimum prices for finished lenses, and also designating customers or classes of customers to whom the licensees may sell. The questions are:

1. Are the customer-designation and price-fixing provisions in the licenses from Univis Corporation to the wholesalers and retailers exempt from the Sherman Act by reason of the patent privilege?

2. Are the customer-designation and price-fixing provisions in the fair trade agreements between Univis Lens Company and the licensed wholesalers and retailers exempt from the Sherman Act by reason of the Miller-Tydings Amendment?

3. Are the provisions of the decree enjoining appellees from taking concerted action with their licensees to prevent the manufacture of competitive products proper under the circumstances?

4. Did the court below correctly rule that appellees are subject to its jurisdiction for purposes of this suit?

#### STATUTES INVOLVED

Sections 1 and 3 of the Act of July 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. §§ 1 and 3, known as the Sherman Antitrust Act, as amended by the Act of August 17, 1937, c. 690, 50 Stat. 693, known as the Miller-Tydings Amendment, provide in part as follows:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspir-

acy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms,

or corporations in competition with each other.

\* \* \* \*

Sec. 3. Every contract, combination in form or trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations is hereby declared illegal.

Section 12 of the Act of October 15, 1914, c. 323, 38 Stat. 736, 15 U. S. C. § 22, known as the Clayton Act, provides as follows:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

#### STATEMENT

This suit was commenced by a complaint filed on September 16, 1940, charging appellees with violating the Sherman Act by unlawfully contracting, combining, and conspiring to restrain and control the sale and distribution of Univis bifocal lenses

(R. 2). On November 26, 1940, the appellees entered a special appearance and moved to dismiss the complaint and to quash service upon the ground that they were not subject to the jurisdiction of the District Court (R. 11). Affidavits were filed and the motion was argued on January 10, 1941 (R. 45). On February 2, 1941, the court below overruled the motion, holding that the appellees were "transacting business" in the district within the meaning of Section 12 of the Clayton Act (R. 45). On February 28, 1941, appellees filed their answer and the case came on for trial on June 4, 1941 (R. 46).

On November 25, 1941, the District Court entered a final decree which dismissed the complaint insofar as it sought to enjoin the license agreements between the appellees and their wholesaler and finishing retailer licensees (R. 683). However, the court granted injunctive relief against appellees' license agreements with prescription retailers, their resale price-maintenance contracts with all types of licensees; and against certain activities engaged in by appellees in concert with their licensees to discriminate against persons engaged in manufacturing bifocal lenses (R. 683-686). The case is now before this Court on cross-appeals.

The evidence consists principally of documents from the files of the corporate appellees and testimony of their officers and employees. There is substantially no dispute over the evidentiary facts.

1. *Description of the Appellees.* The Univis Lens Company, Inc. (hereinafter called the "Lens Company"), was organized on February 4, 1927 (R. 6, 56). On March 14, 1931, as a preliminary step to setting up the Univis licensing scheme, the Lens Company organized Univis Corporation (R. 47). The Lens Company owns a majority of the stock of Univis Corporation and it is conceded that for all intents and purposes the two companies are a single organization (R. 4, 47, 48, 54, 55). The individual appellees are the principal stockholders of the Lens Company and are officers of both corporations, as indicated in the margin (R. 4, 48, 55).<sup>1</sup>

Immediately after the organization of Univis Corporation, the Lens Company transferred to it all of the patents, patent applications, and trademarks which it owned relating to bifocal lenses (Ex. 2, R. 200). In return Univis Corporation gave the Lens Company a license under the patents to manufacture and sell lens blanks and the Lens Company agreed to pay a royalty of 50¢ on each pair of blanks sold (Ex. 2, R. 201; R. 47, 53, 54, 75-76). The Lens Company further agreed to sell the lens blanks only to customers designated by Univis Corporation (Ex. 2, R. 202). Thus Univis Corpora-

Name of individual appellee	Position Univis Lens Company	Position Univis Corporation
Jack R. Silverman	President	Vice President.
Myer H. Stanley	Secretary	President.
George F. Stanley	Vice President	Sec. & Treas.
N. M. Stanley	Ch., Bd. of Dirs.	Ch., Bd. of Dirs.



tion is merely a patent holding company and the Lens Company is its sole licensee for the manufacture and sale of lens blanks.<sup>2</sup> The Lens Company also makes and sells a small number of finished trifocal, cataract, and other highly specialized lenses.<sup>3</sup>

2. *Trade and Commerce Involved.* The Univis lens is of the type commonly known as a bifocal lens. The first step in the manufacture of the lens is the making of a bifocal blank by fusing an insert segment of flint glass, known as the reading portion, into a larger piece of crown glass, which provides for distance vision (R. 48-49; Ex. F, R. 497-513, 518-531). The Lens Company manufactures these lens blanks at its factory in Dayton, Ohio, and sells and ships them to licensed wholesalers and finishing retailers located throughout the United States, including a number located in the District of Columbia and the Southern District of New York (R. 3, 53-55).

The wholesalers and finishing retailers grind, edge, and polish the blanks into finished lenses (R. 178). The finishing retailers then sell the finished lenses to consumers. The wholesalers, on the other hand, sell and ship the finished lenses to licensed prescription retailers, who are engaged

<sup>2</sup> A second company, Shuron Optical Company, was licensed to make and sell lens blanks until some time in 1934 (R. 47, 69-70).

<sup>3</sup> These special lenses constitute less than one percent of the business of the Lens Company (R. 67).

merely in prescribing or supplying the proper lenses for consumers, purchasing such lenses from the wholesalers, and then selling them to consumers. Many of the prescription retailers are located in states other than the states in which their wholesalers are located (Exs. 4, 6, 9, R. 207, 211, 214; R. 3, 54).

There are approximately 330 wholesaler licensees, 325 finishing retailer licensees, and 6,500 prescription retailer licensees (R. 48). In 1940 approximately 6 percent of the lens blanks sold by the appellees to wholesalers and approximately 4 percent of the lens blanks sold by the appellees to finishing retailers were sold to wholesalers and finishing retailers located in the Southern District of New York (R. 42). The annual dollar volume of business done by the Lens Company is nearly \$1,000,000 (R. 43).

3. *The Univis Patents.*—Appellees introduced in evidence 16 patents and two trade-marks owned by Univis Corporation (Ex. F, R. 494). The court below held that the claims of eight of the 16 patents related to a finished lens; that the claims of five of the patents related to methods of making lenses; and that the claims of three of the patents were unrelated to the issues of this case (R. 659–661). The invention claimed in the patents held applicable to finished lenses relates to the shape and position of the reading segment in a bifocal lens (Ex. F, R. 497, 507, 518, 525, 529). This alleged invention

is practiced by appellees because the shape and position of the reading segment is determined in the manufacture of the lens blank (R. 186-187).

The five patents relating to methods of producing lenses claim methods utilized by the Lens Company in manufacturing blanks and do not relate to any method or process employed by the licensees who finish the lens blanks (Ex. F, R. 499, 504, 510, 518, 522).<sup>4</sup> The finishing licensees finish Unavis lens blanks in precisely the same manner as they finish all other bifocal lens blanks (R. 83-88, 163-164, 193-194).<sup>5</sup> Indeed, appellees have never contended that their licensing system is supported by patents covering methods or processes relating to the finishing of lens blanks. Consequently, it appears that appellees perform all of the operations which contribute any claimed element of novelty to Unavis lenses.

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<sup>4</sup> It appears that there may be an exception in the case of patent No. 1,879,769 relating to the use of the "slab-off" method for eliminating prismatic imbalance (Ex. F, R. 518). However, this method is used in finishing only about one percent of the lenses sold by Unavis licensees (R. 175).

<sup>5</sup> In addition to the evidence referred to as supporting this statement, the Government offered to prove this fact but the trial court rejected the evidence (R. 173-174, 184-188, 193-194). This ruling has been assigned as error (Assignment No. 12, R. 690). It seems apparent the evidence was relevant and should have been admitted. The fact, if proved, would have tended to establish that the invention claimed in appellees' patent is practiced by appellees and not by their licensees. That this fact bears upon the legality of the licensing system, see *infra*, pages 32-44.

4. *The Licensing System.*—All dealers in lens blanks sold by the Lens Company and in finished lenses made therefrom must obtain licenses from Univis Corporation.\* These licenses are of the following types:

(a) *Wholesaler and Finishing Retailer Licenses.*—Univis Corporation issues licenses to wholesalers and finishing retailers, sometimes hereinafter collectively referred to as “finishing licensees,” which give them the right “to complete the manufacture of Univis bifocal lenses from rough lens blanks purchased only from the authorized manufacturing licensees of The Univis Corporation” (Exs. 4, 9, R. 208, 215). These licenses recite that Univis Corporation is the owner of patents for the manufacture of such bifocal lenses, that it “is limiting the right to manufacture” lens blanks to certain qualified manufacturers and, further, that it “is limiting the purchases” of the rough lens blanks for further finishing into finished lenses “to a select list of licensees” for the purpose of maintaining the quality of finished “Univis bifocal lenses.”

By the terms of the licenses, the wholesalers expressly agree to sell finished lenses only at the prices fixed by Univis Corporation and only to licensed prescription retailers. They further

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\*The license from Univis Corporation to the Lens Company provides that the Lens Company shall sell Univis lens blanks only to customers designated by Univis Corporation (Ex. 2, R. 202).

agree that they will resell lens blanks only to licensed finishing retailers and only at the prices fixed by Univis Corporation. The finishing retailer licensees similarly agree that they will sell finished lenses only at the prices fixed by Univis Corporation; they further agree that they will sell such finished lenses only to consumers and that they will not resell lens blanks as such (Exs. 4, 9, R. 209, 216).

Each licensee is required to notify Univis Corporation "of any violation on the part of any jobbers or other licensees of the agreements respectively made by them with the corporation, and to assist the corporation in all possible ways in securing evidence against, and enforcing its agreements with such jobbers and licensees" (Exs. 4, 9, R. 210, 216). The wholesalers are required to keep "complete, exact, and full accounts of all sales and the prices at which sold, and the names of the purchasers, firms, corporations, etc., to whom sold" and to make these available to representatives of Univis Corporation at all reasonable times (Ex. 4, R. 209).

(b) *Prescription Retailer Licenses.*—Univis Corporation also licenses retailers who do not have finishing facilities. These licenses recite (Ex. 6, R. 211) that Univis Corporation controls certain patents and patent applications "for the manufacture, use and sale of bifocal eyeglass lenses and blanks." The license, which is signed not only by Univis Corporation but also by a Univis wholesaler,



purports to grant to the prescription retailer a "Franchise to Prescribe and Fit Univis Lenses," in return for which the prescription retailer agrees to sell finished lenses only to consumers and only at the prices prescribed in the so-called "Franchise."

(c) *The Prices Fixed in the Licenses.*—The Lens Company sells Univis lens blanks to wholesaler licensees at an average price of \$3.25 a pair and to finishing retailer licensees at an average price of \$4.00 per pair. The average price fixed by Univis Corporation for the sale of finished Univis lenses by the wholesaler licensees is \$7.00 per pair (R. 8-9, 51-52, 63). The minimum price fixed by Univis Corporation for the sale of finished lenses by both prescription and finishing retailer licensees is \$16.00 per pair for white, and \$20.00 per pair for tinted, bifocal lenses (Ex. 6, R. 212; R. 52).

5. *Operation of the Licensing System.*—Univis Corporation licenses only those wholesalers and retailers whose trade practices indicate that they will adhere to the prices imposed by appellees. Until very recently, Univis Corporation consistently claimed that it licensed only approximately

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A letter dated October 21, 1938, from the Univis Corporation to an applicant, (Exhibit 44, R. 349), states: "Our policy, in the interest of protection of the ethical element, eliminates price-cutting or otherwise undesirable optical outlets. We restrict licensing to a small percentage."

Similarly, a letter dated February 21, 1939, from the Lens Company to an applicant (Exhibit 44, R. 357), states: "As you are doubtless aware, we have a very strong protective policy, by which distribution is confined to ethical channels. A qualification for Univis licensing is the main-

20% of the dealers in a locality so that the dealer receiving the license would be protected in the sale of Univis lenses from "80 percent of [his] competition."<sup>8</sup> Today, not more than 50 percent of the trade is licensed to handle Univis lenses (R. 103-104).

(a) *Qualification of Licensees.*—The final determination whether a license shall issue or be cancelled is made by a licensing committee consisting

taining of high standards and proper competitive methods (in contrast to cut-price competition); contract obligation to observe the established minimum prices; and assurance of use of Univis lenses actively to make the connection mutually profitable."

<sup>8</sup> An advertisement of Univis Corporation (Exhibit 44, R. 324-d) reads in part as follows: "Distribution restricted to the element adhering to approved standards of practice and competitive methods. \* \* \* selective licensing under patents \* \* \* eliminating about 80 percent of your competition."

Similarly in letter dated May 26, 1938, the Lens Company wrote to a licensee (Exhibit 16, R. 234) as follows: "You see Doctor, we only license about 20% of the registered men and for that reason almost 80% of a Univis licensee's competition is automatically eliminated and he is constantly assured of controlled legitimate profit on each pair of Univis prescribed."

Also in a letter dated April 10, 1939, from the Pacific Coast representative to an applicant (Exhibit 45, R. 405) the following statement is made: "We want ethical Optometrists who will sell Univis, maintain the price and abide by all of the clauses in the contract which are not difficult. In return we promise you that the territory will be policed and that everyone on the Univis list will do likewise. We also promise you that we will limit the number of licensees in proportion to the sales of our Univis licensees in that particular territory."

of executives of Univis Corporation (R. 122). Prescription retailers are required to apply for licenses through wholesaler licensees. The wholesalers are furnished with blanks on which to answer questions concerning the retailer applicant, including the following (Ex. 7, R. 213):

Is his establishment exclusively optical— or in connection with a jewelry, drug, or department store?

Does he maintain high standards of practice?

Does he advertise?

If so, does he advertise prices? Or that his prices are lower than average competition?

The accompanying instructions inform the wholesaler that “ ‘price cutters’ are not eligible” as prescription retailer licensees (Ex. 8, R. 213).

The appellees employ a number of travelling representatives who check on the business practices of applicants (R. 92, 97, 98, 131, 140, 149-157). The representatives examine the shops of many of the applicants, make written reports concerning their trade practices, and usually recommend what action should be taken. In many instances Univis Corporation communicates with licensees who are competitors of an applicant to ascertain whether they have any objection to the grant of a license to the applicant.<sup>9</sup> Inquiry is also made as to the

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<sup>9</sup> A letter dated March 10, 1939, from the Pacific Coast representative to an applicant (Exhibit 45, R. 422), reads as follows: “When we have one or two active men in a com-

business practices of the applicant with particular reference to whether he is considered a price cutter, whether he advertises prices, and whether he conducts his business in an "ethical" fashion (Exs. 7, 8, R. 213). Appellees consistently refuse to license applicants whose shops are located in drug stores, or in jewelry or department stores not receiving appellee's approval, or who advertise prices or the acceptance of installment payments.<sup>10</sup>

munity we watch conditions very carefully to see that no violations occur and no new licenses are written without the O. K. of the active licensee. We pride ourselves on a policy of co-operation along this line. We have turned down during the past three months at least six licenses from Oregon because each one came from a town in which we have an active licensee."

Similarly in a company memorandum dated March 14, 1938, from the Pacific Coast representative to the vice president of Univis Corporation (Exhibit 45, R. 417), it is stated: "We have too much business from Large accounts in Long Beach to take chances on licensing too many or accounts who do not belong to the association or who do not come under the heading of 'In good standing with Fellow members of the Optical profession' and then again we have too good an oculist business to take a chance on advertisers. One little no account Optometrist can spoil a good number of Univis Rx's with Oculists each month if we are not careful.

"If we get the O. K. from the larger Optometrists who are using a goodly quantity of Univis each month then we need not feel that our business is in danger, without this O. K. anything can happen.

"The answer is definitely NO until I can talk it over with Long Beach licensees."

<sup>10</sup> A letter dated April 7, 1937, from the Pacific Coast representative of the Lens Company to an applicant (Exhibit 45, R. 383) states: "There are two reasons why it is hardly possible for us to consider accepting your application at this time. The first and main reason is the fact that

(b) *Cancellation of Existing Licenses.*—Appellees have cancelled licenses principally because of the failure on the part of the licensees to abide by the price-fixing provisions.<sup>11</sup> Licenses have also been cancelled (1) for advertising prices or the acceptance of installment payments, or otherwise employing advertising matter objectionable to appellees; (2) for selling Univis products to customers other than those designated by the Univis Corporation; (3) for not giving a certain percentage of the licensee's bifocal lens business to Univis; (4) because the licensee was located in a drug, department, or jewelry store; and (5) because the licensee, while otherwise unobjectionable, merged

we do not sell those 'Who advertise in a manner which tends to create the impression that they are cheaper than their competitors.' This paragraph is taken from our eligibility standards which we set up some years ago for the guidance of our field representatives. We employ a clipping bureau and have before us some of your advertising and we regret that this type of advertising does not in our opinion tend to build a stable Optical business."

<sup>11</sup> Appellees' representatives were used for the purpose of policing the price-fixing provisions. A letter dated May 2, 1937, from the Pacific Coast representative to a licensee (Exhibit 45, R. 386) states in part: "The representatives also keep the territory free from price cutting, of course the secret of our perpetual success is that we do not license anyone who has the slightest idea of cutting prices on any kind of merchandise. The second paragraph of the contract which you signed says that you can supply Univis bifocals only as finished lenses to the patients whom you wait upon, that means that you cannot sell another Optometrist a pair of Univis even though he is willing to pay you the full retail price."



its business with that of a dealer whose trade practices were deemed objectionable (Exs. 18, 19, 27, 31, 32, 44, 45, R. 298, 303-305, 306-b, 328, 330-332, 334, 335, 340-342, 344-345, 347, 367-368, 388). In addition, licenses have been cancelled because the licensee engaged in price cutting on the products of other manufacturers,<sup>12</sup> and because the licensee advertised products of other manufacturers in a manner objectionable to the appellees.

(c) *Effect of licensing system on competition.*—

As a result of the licensing system, appellees maintain fixed prices for Univis bifocal lens blanks and

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<sup>12</sup> An inter-company memorandum regarding the cancellation of an existing license (Ex. 44, R. 332-c) states: "Removal recommended. He is dispensing to retail patients at Rx cost plus fitting charge. This, of course, brings his glasses very low. Probably will uphold the price of Univis, but I believe it wiser to remove rather than take the chance of our Reps. believing he is doing the same thing on Univis. Discussed with Hager [a wholesaler]—satisfied."

The same policy is applied in connection with issuing licenses. A letter dated December 6, 1935, from Univis Corporation to one of its wholesaler licensees (Ex. 44, R. 333) states: "The matter with Dr. C. C. Morrison is a tough one to take up in a letter, for several reasons. However, it is tackled to give him a good idea of what holds up his application—relieving you of any responsibility. It is possible he will say that regardless of what he does with other lenses and optical goods, he will maintain the price on Univis. That won't do. There are 'price-cutters' galore who would rigidly adhere to Univis contract if we gave them franchises, but their competitors wouldn't believe it—and what the dealers believe about what is going on is what makes or mars Univis prestige in the locality."

lenses and prevent competition among their licensees. A further result is the existence of an integrated organization of dealers which has been and can be used as an economic weapon for destroying competition from other manufacturers. For instance, when Titmus Optical Company, Inc., a manufacturer of lens blanks, announced to the trade in the fall of 1939 that it intended to market a bifocal lens blank similar in appearance to the Univis bifocal lens blank, appellees first threatened the Titmus Optical Company with suit for infringement, and then instructed a number of their wholesaler licensees to cancel and threaten to cancel orders for other types of lenses made by Titmus Optical Company if that company marketed a competitive bifocal lens blank. The result was that Titmus Optical Company did not go into this line of business (R. 115-120, Ex. 20, R. 237-268).

6. *Resale Price-Maintenance Contracts.*—In 1940 the Lens Company executed resale price-maintenance contracts with the wholesaler, finishing retailer, and prescription retailer licensees of Univis Corporation (Exs. 10, 12, 13, R. 217, 224, 228). The Lens Company sent out these resale price-maintenance contracts accompanied by a form letter which stated (Ex. 14, R. 233):

Without changing the basic Univis licensing structure, we propose to supplement the present license with a Fair Trade Agreement based on the Tydings-Miller Act and the Fair Trade Acts of the various States.

These resale price-maintenance contracts fix the minimum price at which the licensees may sell finished lenses and designate the customers or classes of customers to whom the licensees may sell lenses. The price-fixing and customer-designation provisions of the contracts duplicate the comparable provisions of the license agreements. (Exs. 10, 12, 13, R. 219, 220, 225, 227, 230, 231.)

7. *Opinion, Findings, and Decree of the Court Below.*—On September 17, 1941, the court below filed an opinion holding that appellees' patents covered the finished lenses processed by wholesalers and finishing retailers, that the wholesaler and finishing retailer licenses were valid patent licenses, and that the restrictions in those licenses fixing prices and designating customers were legal under the authority of *United States v. General Electric Co.*, 272 U. S. 476 (R. 655). The court held, however, that the price-fixing provisions in the prescription retailer licenses were invalid because they controlled the resale of a patented product. The court also held that the fair trade agreements were illegal because the Lens Company, the manufacturer of the lens blanks, was fixing the resale price of the finished lens. In addition, the court held that the appellees, together with certain wholesaler licensees, had engaged in a concerted effort to interfere with the Titmus Optical Company because it proposed to manufacture competitive bifocal lenses.

On November 25, 1941, the court filed findings of fact and conclusions of law in accordance with its opinion (R. 670). On the same day it entered a

decree dismissing the bill of complaint in part but enjoining appellees from (1) carrying out the restrictive provisions in the prescription retailer licenses; (2) carrying out the fair trade agreements; and (3) continuing acts similar to those resulting in the interference with the business of Titmus Optical Company (R. 683).

#### SPECIFICATIONS OF ERRORS TO BE URGED IN NO. 855

The District Court erred:

1. In holding that the agreements between Univis Corporation and the wholesaler and finishing retailer licensees were lawful patent license agreements, and in failing to hold that they violate Sections 1 and 3 of the Sherman Act.

2. In holding that the sale of the Univis lens blanks by the appellees does not exhaust the patent monopoly, and in failing to hold that the appellees after selling the lens blanks have no right to control the sale of the finished lenses processed from the blanks.

3. In failing to hold that the appellees' licensing plan was so tainted with illegality and constituted such an unreasonable restraint of trade as to require that the entire scheme be struck down in order to correct the abuses inherent therein.

#### SUMMARY OF ARGUMENT

##### I

Both appellees' patent licenses and their resale price-maintenance contracts require all persons en-

gaged in the distribution of Univis bifocal lens blanks and finished lenses to sell only to customers or classes of customers designated by appellees and only at prices fixed by appellees. Unless those agreements are specifically sanctioned by either the patent law or the Miller-Tydings Amendment, they plainly constitute illegal restraints of trade in violation of the Sherman Act.

## II

The customer-designation and price-fixing provisions in appellees' finishing licenses are not sanctioned by the patent law.

A. The alleged invention which is the basis for all of the relevant patents held by appellees relates solely to the shape and position of the reading segment in a bifocal lens. That invention is practiced by appellees in the manufacture of the Univis lens blanks and appellees secure their entire reward for the invention by the sale of those blanks. Once the blanks embodying the patented idea are sold, appellees can exercise no further control over the sale either of the blanks themselves or of the finished lenses made from the blanks. This Court squarely so held in *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, where the rule was established that a patentee, after securing his reward by selling an article of commerce embodying his invention, may not control the price at which his licensee sells a commodity produced from the purchased article.



B. The court below ignored the initial sale of the blanks to the finishing licensees and treated the finishing licensees as though they were in the position of ordinary manufacturing licensees licensed to make and vend a patented article. On this premise, it upheld the restrictive provisions of the finishing licenses upon the authority of *United States v. General Electric Co.*, 272 U. S. 476. We believe that the court's premise is plainly wrong and that this case is governed by the *Ethyl* rather than by the *General Electric* case. But even if this Court should think otherwise, the finishing licenses should still be held invalid, for we believe that the *General Electric* case expresses an erroneous view of the scope of the patent privilege and that, if necessary for the decision of this case, it should be reexamined and overruled.

No express provision of the patent law gives a patentee a right to determine the price at which, and the customers to whom, his licensees shall sell. And to imply such a right would in no way further the purpose of the patent statute which is to benefit the public by encouraging the development of new inventions. The type of restrictions here involved, far from benefiting the public by giving an incentive to inventors, injures the public by depriving it of the benefits of competition. The Sherman Act expresses a public policy in favor of free and unrestricted competition so strong that it taints with illegality all attempts to fix prices, re-

gardless of the so-called "rule of reason"; that public policy should not be required to give way in the one situation of patent licenses, particularly in the absence of any countervailing considerations of public interest derived from the patent law.

C. Aside from the illegality of the license agreements; considered individually, the licensing scheme in its entirety is plainly illegal. Appellees have not granted licenses for the purpose of securing a reward for their invention; they have merely used the licensing system to offer their licensees a price-fixing scheme and protection from competition as an inducement to purchase appellees' lens blanks. No patentee is entitled to use his patent for the purpose of promoting the business of another or to secure a reward other than that which may be obtained from the exclusive right to make, use, and vend the patented article.

### III

The Miller-Tydings Amendment does not sanction resale price-maintenance contracts such as those here involved. Appellees' contracts with wholesalers and finishing retailers do not relate to the resale of a commodity but to the original sale of a finished lens; consequently the contracts are not within the terms of the statute.

Furthermore, all of the resale price-maintenance contracts purport to relate to finished lenses bearing the trade-mark "Univis," which is owned by appellees. The statute permits resale price-mainte-

nance contracts only with respect to "a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer of such commodity." In this case appellees are basing their fair trade contracts on their own trade-mark, but that trade-mark is claimed to be applied to a commodity which is produced by the wholesalers and finishing retailers, *i. e.*, the finished lenses. Consequently, the contracts are invalid because the trade-mark allegedly applied to the commodity is not that of the producer.

In any event the resale price-maintenance contracts were adopted merely to buttress the appellees' patent-licensing system and contain practically the same provisions as the patent licenses. If the patent-licensing system is illegal, failure to strike down the fair trade contracts would merely enable appellees to continue to harvest the fruits of their illegal scheme.

#### IV

Even should the finishing licenses be held valid, the prescription retailer licenses are clearly illegal, as the court below held.

#### V

The record establishes that the corporate appellées were transacting business in the Southern District of New York within the meaning of Section 12 of the Clayton Act. Consequently, the court below properly held that appellees were subject to its jurisdiction.

## ARGUMENT

## I

## THE AGREEMENTS BETWEEN APPELLEES AND THEIR LICENSEES DIRECTLY AND SUBSTANTIALLY RESTRAIN TRADE AND COMMERCE

There is no dispute in this case that appellees have entered into a series of agreements which directly and substantially restrain trade in Univis lenses. The decisive issue is whether that restraint of trade is a permissible exercise of appellees' legal rights under either their patent grants or the laws authorizing resale price-maintenance contracts. However, the legal questions thus presented are clarified by considering first the nature of the restraints which the agreements impose.

The facts recited in the Statement show that appellees' distribution system is based upon two series of agreements. The first series consists of the patent licensing agreements entered into between Univis Corporation, on the one hand, and the Lens Company, the wholesalers, and the two classes of retailers, on the other; the second series consists of the agreements between the Lens Company and the wholesalers and the two classes of retailers purporting to fix resale prices. Since the two types of agreements are designed to accomplish exactly the same result and the duplication serves no purpose except to provide appellees with two legal arguments in defense of their scheme,

no effort will be made to distinguish between the agreements in this section of the brief.<sup>14</sup>

Under the terms of the agreement between Univis Corporation and the Lens Company, the Lens Company agrees to sell lens blanks only to purchasers who have obtained finishing licenses from Univis Corporation. Such finishing licenses, in turn, are granted by Univis Corporation to selected wholesalers and finishing retailers. Wholesalers are required to agree that they will sell lenses only to licensed prescription retailers and only at prices fixed by appellees. Similarly, finishing retailers are required to agree that they will sell lenses only to ultimate consumers and only at prices fixed by appellees. And, finally, prescription retailers, in order to secure permission to purchase from licensed wholesalers, must agree to resell the lenses only to ultimate consumers and only at prices fixed by appellees.

Under these agreements, it is clear that appellees are expressly empowered to fix the price for every sale of Univis lenses, whether made by a wholesaler

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<sup>14</sup> The identity of purpose of the agreements is discussed *infra*, page 75. The one difference that might be thought important is that the patent license agreements define the relations between Univis Corporation and the Lens Company, while Univis Corporation is not a party to the resale price-maintenance contracts. However, that difference is not significant because it is conceded that the Univis Corporation and the Lens Company are, for all intents and purposes, the same. See p. 7, *supra*.



to a prescription retailer, or by a prescription or finishing retailer to the ultimate consumer. Further, the agreements show that appellees have absolute power to determine who shall be allowed to engage in any part of the business of manufacturing, distributing and selling Univis lenses. And the record reveals arbitrary exercise of that power at the uncontrolled discretion of appellees.

Every person seeking permission to engage in handling Univis lenses is investigated by appellees and passed upon by a special licensing committee consisting of executives of the corporate appellees. The information upon which they base their judgment includes reports of appellees' service men and information received from persons holding licenses. As a result, competitors of an applicant are given an opportunity to influence the decision whether a license shall be granted. As a matter of policy appellees have refused to license persons who might cut prices, not only on Univis lenses, but also on the products of other companies entirely unrelated to appellees. Licenses have also been refused persons seeking to sell Univis lenses in a place of business considered undesirable by appellees.<sup>18</sup> Similar reasons have been considered sufficient grounds for cancelling licenses. Indeed, at one time, appellees, assuming that they were entitled to decide

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<sup>18</sup> For example, appellees have refused to allow Univis lenses to be handled in a drug store or in any place of business which engages in price cutting (Ex. 44, R. 326, 326, 344, 351-352).

arbitrarily who should be allowed to deal in Univis lenses, advertised that they licensed only 20 percent of the trade. See pp. 13-18, *supra*.

Unless appellees can establish that the foregoing agreements are exempt from the Sherman Act prohibition against restraints of trade by reason of either the patent laws or the Miller-Tydings Amendment, the agreements are unquestionably illegal, both because of the price-fixing provisions (*United States v. Trenton Potteries*, 273 U. S. 392; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150) and because of the provisions excluding from trade in Univis lenses everyone except the licensees of Univis Corporation. In effect, these latter provisions constitute an illegal boycott of all those who do not conform to the business practices approved by appellees. *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457; cf. *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436; *Paramount Famous Corp. v. United States*, 282 U. S. 30, 43; *United States v. First National Pictures, Inc.*, 282 U. S. 44; *Eastern States Lumber Ass'n v. United States*, 234 U. S. 600. The agreements thus create a combination consisting of appellees and all of the Univis licensees which, under the guidance of Univis Corporation, makes impossible free and open competition in the distribution and sale of Univis lenses. That the combination was formed by a series of separate agreements rather than by a single agreement is of no

consequence; neither is it significant that the parties to the combination may not have acted simultaneously. *Interstate Circuit v. United States*, 306 U. S. 208; *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436.

In the court below the contention was made that there could be no substantial restraint of trade because commerce in Univis lenses amounts to only two and one-half percent of the entire commerce in lenses. But price fixing and refusal to deal are by their very nature the kind of restraints which restrict the amount of commerce and are accordingly illegal irrespective of the volume of commerce restrained. As this Court has said, "it is the nature of the restraint and its effect on interstate commerce and not the amount of the commerce which are the tests of violation." *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 485; see also *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 224, fn. 59.<sup>16</sup>

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<sup>16</sup> Another answer to the argument, which would also seem conclusive, is that the Univis licensing system controls the entire commerce in Univis lenses. Appellees contend that Univis lenses are a special type of lens having unique features which make them more desirable than other kinds of lenses. Acceptance of that contention requires the conclusion that the public is entitled to free competition in this type of lens unless it has waived that right by specific statutory provisions. Since appellees' principal defense is based on a claimed statutory waiver of the right to free competition by reason of the patent laws, appellees are placed in the dilemma of standing on their contention that a Univis

## II

APPELLEES' LICENSING SYSTEM CANNOT BE JUSTIFIED  
AS AN EXERCISE OF THE PATENT PRIVILEGE

The court below held, upon the authority of *United States v. General Electric Co.*, 272 U. S. 476, that the price-fixing provisions in appellees' wholesaler and finishing retailer licenses were valid. We think that this ruling is erroneous and that appellees' licensing system should be held illegal for the following reasons: First, since appellees obtain their entire reward from their patents by making and selling lens blanks embodying the alleged discovery embraced by the patents, this case is not governed by the *General Electric* decision; rather, it falls within the ruling in *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, to the effect that a patentee, after securing his reward by selling an article embodying the invention, may not control the price at which his licensee sells a commodity produced from the purchased article. Second, assuming that the rule of the *General Electric* case is applicable to the facts of this case, we believe that that decision should be overruled because neither the letter nor the purpose of the

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lens is a unique article of commerce which, in the absence of the asserted patent monopoly, should move in commerce free of all restraints, or of admitting that the patents cover an article which is not essentially different from other lenses and is therefore not properly patentable.

patent law justifies, and the paramount public interest forbids, permitting a patentee to fix prices for his licensees. Third, irrespective of the validity of the licenses individually, the licensing system, viewed in its entirety, is illegal because it is merely an inducement offered to promote the sale of lens blanks by offering price protection to customers and is therefore not a valid exercise of the patent privilege.

**A. APPELLEES' PATENT LICENSING SYSTEM IS AN ATTEMPT TO CONTROL THE DISTRIBUTION AND SALE OF UNIVIS LENSES BEYOND THE SCOPE OF THE PATENT PRIVILEGE**

As a basis for the patent licensing system, appellees introduced in evidence 16 patents. The court below held that eight of the patents claimed a finished lens, five related to methods of producing lenses, and three were irrelevant to the issues in this case. Although the Government urged below that the only relevant patent claims possessed by Univis Corporation related solely to lens blanks because the claims of the patents should be limited by the descriptions in the specifications, we think it unnecessary to press that contention before this Court. The controlling fact is that the entire license structure is built upon a single contribution to science and the useful arts—specifically, the claimed invention of an allegedly unique type of lens blank or lens for spectacles. The distinguishing feature of the lens lies in certain alterations in the shape and position of the segment which is fused into the blank in order to produce



the bifocal lens blank from which the Univis bifocal lens is made.<sup>17</sup>

Regardless of the number of patents appellees have acquired, their business consists solely in exploiting the exclusive right to practice whatever invention may be said to have resulted from their single idea of having a different shape of segment inserted at a different place in a lens blank or lens. The Lens Company utilizes that idea in manufacturing the blanks. It fuses the properly shaped segments into the correct position in the blank so that a finished lens may be produced by grinding,

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<sup>17</sup> It can hardly be contended that the patents are anything more than improvement patents. Bifocal lenses made by fusing together segments of glass of different refractive power were invented in 1908 by one Borsch. *Univis Corp. v. Rips*, 104 F. (2d) 749 (C. C. A. 6th). In that case patents Nos. 1,899,777 and 1,912,165, two of the patents relied upon by appellees and referred to in the decision of the court below, were held invalid for want of invention. In discussing the prior art, the court noted that bifocal lenses were first made by Benjamin Franklin, who mounted two separate lenses, one above the other, in a single frame; the opinion then discusses the numerous subsequent improvements, the most significant of which was the Borsch invention of a bifocal lens produced by grinding a recess in an ordinary lens and fusing therein a segment of glass of different refractive power. Referring to appellees' patents, the court said (p. 752): "If there was any invention, it lay in the novel shaping and positioning of this insert, but the possibilities for variation in shaping and positioning were innumerable once the manner of doing so was revealed, and we hardly think that every fresh effort which results in a new shape or position for the insert can be said to amount to invention."

polishing, and shaping the blank. The blank is then sold to licensed wholesalers and finishing retailers for completion into a finished lens, which, as the court below pointed out, is the only purpose for which the blank can be used (R. 672).

The purchase price received by the Lens Company for the blanks represents the entire monetary consideration which the finishing licensees are required to give, not only for the blanks but for the right to grind, polish, and shape the blanks into finished lenses. Univis Corporation does not attempt to exact any charge in the form of royalty or otherwise from these licensees, but it does require them to sell finished lenses only to customers or classes of customers designated by it, and to sell only at minimum prices fixed by it. These restrictions, it should be noted, relate to the sale of a finished article processed from lens blanks in which the single patented idea or discovery exploited by appellees has already been embodied.<sup>18</sup>

The basic question presented on this aspect of the case is thus whether a patent owner, having chosen to exploit his patents by securing for himself a complete monopoly of the manufacture, distribution, and sale of a product useful only for turning out a

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<sup>18</sup> If, as we contend, these restrictions are invalid, the whole licensing system would necessarily fall and it would become unnecessary to consider the legality of the agreements whereby appellees fix the prices at which the customers of the wholesaler licensees (the prescription retailers) may resell the lenses.

finished article claimed in the patents, may restrict the finishing of the article to those who agree to sell only at prices fixed by him and only to customers designated by him.<sup>19</sup> We believe that under the settled decisions of this Court a patentee may not so enlarge his patent monopoly.

The method chosen by appellees for exploiting their patents is almost identical to that considered by this Court in *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436. There the Ethyl Corporation held patents covering (1) a fluid used in the production of motor fuel, (2) the process of producing motor fuel by mixing the patented fluid with ordinary gasoline, and (3) the use of motor fuel containing the patented fluid in internal-combustion engines. However, the Ethyl Corporation in fact exploited only the patent on the fluid. It manufactured and sold this fluid to refiners who were given royalty-free licenses to make the motor fuel and sell it to licensed jobbers. The jobbers, in turn, were licensed to resell the fuel to retailers. None of the jobber licenses contained price-fixing

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<sup>19</sup> The court below held, and appellees admitted, that Univis Corporation and the Lens Company are to all intents and purposes the same. In view of this fact, it seems useless to consider the legality of the purely artificial arrangements between the companies. Consequently, we shall not urge the illegality of the restrictive provisions in the agreement between Univis Corporation and the Lens Company, although it would seem that those provisions are subject to the objections which we urge (*infra*, pp. 44-61) to similar provisions in the other licenses.

provisions such as are here involved, but the Government attacked those licenses because it was shown that Ethyl Corporation was using the licenses to maintain prices and marketing policies determined by the refiners. No attack was made on the refiner licenses.

This Court held that Ethyl Corporation was not entitled by its patents to enforce an otherwise illegal licensing system excluding jobbers from the market. The opinion states (309 U. S. at 459):

Appellant neither owns nor sells the patented fuel nor derives any profit through royalties or otherwise from its sale. It has chosen to exploit its patents by manufacturing the fluid covered by them and by selling that fluid to refiners for use in the manufacture of motor fuel. Such benefits as result from ~~control~~ over the marketing of the treated fuel by the jobbers accrue primarily to the refiners and indirectly to appellant, only in the enjoyment of its monopoly of the fluid secured under another patent. The licensing conditions are thus not used as a means of stimulating the commercial development and financial returns of the patented invention which is licensed, but for the commercial development of the business of the refiners and the exploitation of a second patent monopoly not embraced in the first. The patent monopoly of one invention may no more be enlarged for the exploitation of a monopoly of another, see *Standard Sani-tary Mfg. Co. v. United States, supra*, than

for the exploitation of an unpatented article, *United Shoe Machinery Co. v. United States*, *supra*; *Carbice Corporation v. American Patents, Corp.*, *supra*; *Leitch Manufacturing Co. v. Barber Co.*, *supra*; *American Lecithin Co. v. Warfield Co.*, 105 F. 2d 207, or for the exploitation or promotion of a business not embraced within the patent. *Interstate Circuit v. United States*, *supra*, 228-230.

While this passage was no doubt directed to establishing the illegality of the jobber licenses, which were one step beyond the refiner licenses, the reasoning would apply with equal force to the refiner licenses if any provisions of those licenses had been attacked as eliminating competition between refiners.<sup>20</sup> The basic proposition announced is that a patentee is foreclosed from controlling the disposition and sale of a patented article after he has received his entire reward for the particular invention which he has chosen to exploit. The foundations of this rule are almost as old as the patent law. *Bloomer v. McQuewan*, 14 How. 539; *Adams*

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<sup>20</sup> This Court affirmed the decree of the District Court enjoining the Ethyl Corporation from requiring refiners to sell only to licensed jobbers. However, it is not clear whether that requirement fell of its own weight or because of its relation to the jobber licenses which had been used for the illegal purpose of fixing prices. It would seem that either view would require enjoining the customer-designation provisions in the finishing licenses which appellees grant to wholesalers because those provisions complement the price-fixing provisions in the prescription retailer licenses.



v. *Burke*, 17 Wall. 453; *Hobbie v. Jennison*, 149 U. S. 355.

The noteworthy feature of the quoted portion of the *Ethyl* opinion is that it clearly indicates that no artificial rule or formalistic construction of patent claims determines the point at which exploitation of the invention by the patentee exhausts the patent rights. In the *Ethyl* case the patentee had four patents covering the entire field from the manufacture of the fluid to the actual consumption of motor fuel containing the fluid. Yet its sole contribution to science, and the only patented idea which it chose to exploit, was the fluid itself. Accordingly, this Court held that the patentee, upon selling the fluid to refiners, received the entire reward to which it was entitled and therefore could exert no further control over the use or disposition of the fluid.

The present case is in all substantial respects similar to the *Ethyl* case. Appellees exploit the patents received as the result of their single idea or invention by manufacturing and selling lens blanks embodying the distinctive feature. Appellees sell the blanks knowing and intending that they shall be used for the sole purpose for which they are suited, the making of finished lenses. The purchasers buy the blanks for the sole purpose of finishing them into eyeglass lenses. With the sale of the blanks appellees receive the entire reward which they claim for their invention. At the same

time the purchasers not only receive full title to the blanks but acquire a license implied in law to use the blanks for the only purpose for which they are adapted, i. e., to make finished lenses for sale to the trade. Cf. *Leitch Mfg. Co. v. Barber Co.*, 302 U. S. 458, 461; *St. Joseph Iron Works v. Farmers Mfg. Co.*, 106 F. (2d) 294 (C. C. A. 4); *Radio Corporation of America v. Andrea*, 79 F. (2d) 626, 629 (C. C. A. 2); *Edison Electric Light Co. v. Peninsular Light, Power & H. Co.*, 101 Fed. 831, 836-837 (C. C. A. 6).

It would indeed be anomalous if appellees could defeat rights which purchasers would otherwise acquire through operation of law by compelling the purchasers to accept express licenses limiting the right to vend both the blanks and the finished lenses. As this Court said in *Adams v. Burke*, 17 Wall. 453, 456:

But, in the essential nature of things, when the patentee, or the person having his rights, sells a machine or instrument whose sole value is in its use, he receives the consideration for its use and he parts with the right to restrict that use. The article, in the language of the court, passes without the limit of the monopoly. *Bloomer v. McQuewan*, 14 Howard, 549; *Mitchell v. Hawley*, 16 Wallace, 544. That is to say, the patentee or his assignee having in the act of sale received all the royalty or consideration which he claims for the use of his invention in that particular

machine or instrument, it is open to the use of the purchaser without further restriction on account of the monopoly of the patentees.<sup>21</sup>

A necessary corollary of this rule is that a patentee is not entitled to fix the price at which a patented article sold by him shall be resold by the purchaser. *Bauer v. O'Donnell*, 229 U. S. 1; *Straus v. Victor Talking Mach. Co.*, 243 U. S. 490; *Boston Store v. American Graphophone Co.*, 246 U. S. 8. Under this established principle, it seems entirely clear that appellees' patents do not entitle them to restrict the right of finishing licensees to use or resell the lens blanks which they purchase from appellees. And since the blanks are only useful for the production of finished lenses, it seems equally clear that appellees have also parted with the right to exercise any dominion over the sale of the finished lenses.

No different result follows simply because of appellees' alleged patent claims to the finished

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<sup>21</sup> In that case the plaintiff's predecessor in interest had assigned to a coffin manufacturer all of his rights in a patent which covered the manufacture, use, and sale of coffin lids, but the assignment was limited to an area within a radius of 10 miles around Boston. The assignee made and sold a coffin lid within the area to the defendant, who used the coffin lid outside the area. The plaintiff sued the defendant for infringement of the patent. The Court held that a plea setting up the facts as to the sale was good and that the suit should be dismissed. See also *Hobbie v. Jennison*, 149 U. S. 355; *Keeler v. Standard Folding Bed Co.*, 157 U. S. 659. But cf. *General Talking Pictures Corp. v. Western Elec. Co.*, 304 U. S. 175; 305 U. S. 124.

lenses. Substantially the same situation existed in the *Ethyl* case. Nor can the licensing system be justified because of some alleged division of functions under the same patent between the appellees and the finishing licensees in producing the finished Univis lens.<sup>22</sup> As the *Ethyl* case establishes, the validity of a licensing system such as that here involved does not turn upon any technical construction of the patents. The important consideration is that appellees here, like the patentee in the *Ethyl*

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<sup>22</sup> The District Court held that appellees' patents applied to finished lenses, but it is not clear whether the court thought that the lens blank was covered by the patents. The court said (R. 661):

"The situation is not one in which the patentee seeks to control an unpatented element of a combination and so differs from *Carbice Corp. v. American Patents Development Corp.*, 283 U. S. 27. \* \* \* Here the owner of the patents neither manufactures nor sells a product covered by the patents. The rough blank made by the Lens Company as a licensee is not a standard article of commerce."

If the court was referring to the fact that Univis Corporation owns the patents while the Lens Company manufactures the blanks, the statement disregards the previous holding of the court that the two companies are to all intents and purposes the same. On the other hand, if the court considered the doctrine of improper use as applicable only to standard articles of commerce, the decision is directly contrary to the ruling of this Court in the *B. B. Chemical Co. v. Ellis*, No. 75, this Term, decided January 5, 1942. There the argument was made that the specially treated canvas which the patentee sold was not a standard article of commerce because it was only useful in the process defined in the patents. This Court rejected the contention and held that the rule of improper use was applicable regardless of the nature of the unpatented article.

case, have attempted to extend the one monopoly to which they are presumably entitled by reason of their one idea far beyond the limits allowed by the patent law. They have not been content with merely securing for themselves a monopoly in the manufacture and sale of lens blanks embodying their idea but have sought to exercise complete control over the finishing of the blanks and the sale of the finished lenses by those who have purchased the blanks from them. So flagrant an abuse of the patent privilege cannot be shielded from the law by devising an elaborate licensing system under which the licensees perform the final operation necessary to make the patented product available to the public.

This Court has said that it will "look through the words and forms," with which a patentee "has most elaborately enveloped its purpose, to the substance and realities of the transaction." *Straus v. Victor Talking Mach. Co.*, 243 U. S. 490, 498.<sup>28</sup> In that case a patentee sold a patented article, but sought to disguise the sale as a license to use by calling the contract of sale a "license agreement" and the consideration a "royalty"; this Court, however, penetrated to the substance of the transaction, held it to be a sale, and accordingly

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<sup>28</sup> The Court further said (pp. 500-501):

"Courts would be perversely blind if they failed to look through such an attempt as this 'License Notice' thus plainly is to sell property for a full price, and yet to place restraints upon its further alienation, such as have been hateful to the law from Lord Coke's day to ours, because obnoxious to the public interest."



held invalid the terms contained in a so-called "license notice" which attempted to impose restrictions upon the use of the patented article. Equal regard for substance in this case requires a holding that the monopoly of manufacturing and selling the lens blanks is the reward appellees have chosen to reap for their invention and that, after the sale of the blanks at a price satisfactory to them, "the public is entitled to whatever advantage may be derived from competition in the subsequent traffic." *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373, 409.

The contention may be advanced that appellees are able to enhance their reward from the patents by means of the licensing system. But the licenses are royalty free and the only charge which appellees make is for the lens blanks. Consequently the restrictions on the subsequent use and sale of either the blanks or of the finished lenses have as their direct result the promotion of the business of the licensees rather than that of appellees. To be sure, these restrictions make the purchase of Univis lens blanks more attractive by limiting the number of persons who may handle Univis lenses and fixing a minimum price for such lenses. But if this enhances the reward for appellees' invention, it does so only by enabling the appellees to sell a price-fixing scheme together with their lens blanks. A reward so derived is clearly not within the scope of the patent monopoly. Precisely the same type of reward may be derived by a patentee who sells a

patented article subject to resale price restrictions. Yet such restrictions have consistently been held illegal by this Court. See *Straus v. Victor Talking Mach. Co.*, 243 U. S. 490; *Bauer v. O'Donnell*, 229 U. S. 1; *Boston Store v. American Graphophone Co.*, 246 U. S. 8.

The limited monopoly which the public has seen fit to grant to inventors as a reward for their ingenuity is in derogation of the paramount public policy against restraints on trade and commerce; accordingly, the scope of that grant may not be extended beyond the point where it serves its primary purpose of promoting "the progress of science and useful arts." See *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502, 510-511. In the present case, appellees derive the reward from their patented idea through the monopoly which they have of the manufacture and sale of lens blanks embodying their invention. To allow them at the same time to assert complete control over the subsequent use and sale of the finished product by purchasers of the blanks would be to reward them, not for the ingenuity displayed in their alleged invention, but for the ingenuity displayed by their counsel in devising the patent claims and the licensing agreements. The public interest in free competition obviously forbids any such result.

B. A PATENTEE MAY NOT DETERMINE THE PRICE AT WHICH HIS  
LICENSEES SHALL SELL

The court below expressed the view that the *Ethyl* case is not applicable to the present situation

for the reason that the finishing licensees, unlike the jobbers in the *Ethyl* case, partake to some extent in the manufacture of the finished lens. Because of this fact, the court felt required to ignore the initial sale of the blanks by the Lens Company to the finishing licensees, even though the blanks embody the single idea covered by appellees' patent. Accordingly, it treated the finishing licensees as though they were in the position of ordinary manufacturing licensees licensed to make and vend a patented article. On this premise, it held the price-fixing and customer-designation provisions of the finishing licenses valid upon the authority of *United States v. General Electric Co.*, 272 U. S. 476.

For the reasons discussed in the preceding section of the brief, we believe that the court's premise is plainly wrong and that this case is governed by the *Ethyl* rather than the *General Electric* decision. But even if this Court should think otherwise and hold that the situation portrayed by this record is comparable to the situation in the *General Electric* case, we believe that the finishing licenses should still be held invalid. For we believe that the *General Electric* case expresses an erroneous view of the scope of the patent privilege and that, if necessary for the decision of this case, it should be reexamined and overruled.

1. In the *General Electric* case, this Court upheld provisions fixing prices for the sale of a patented

article which were contained in a manufacturing license granted by a patentee, engaged in the manufacture of the patented product, to a competitor desiring to make the same product. In passing upon that phase of the case the Court said (p. 490):

If the patentee [having granted a license to make and use] goes further, and licenses the selling of the articles, may he limit the selling by limiting the method of sale and the price? We think he may do so, provided the conditions of sale are normally and reasonably adapted to secure pecuniary reward for the patentee's monopoly. One of the valuable elements of the exclusive right of a patentee is to acquire profit by the price at which the article is sold. The higher the price, the greater the profit, unless it is prohibitory. When the patentee licenses another to make and vend, and retains the right to continue to make and vend on his own account, the price at which his licensee will sell will necessarily affect the price at which he can sell his own patented goods. It would seem entirely reasonable that he should say to the licensee, "Yes, you may make and sell articles under my patent, but not so as to destroy the profit that I wish to obtain by making them and selling them myself."

There is an obvious distinction between the facts in the *General Electric* case and both the actual facts in this case and the assumed state of facts upon which the District Court premised its decision. If it were sufficient merely to distinguish the

*General Electric* decision, it would only be necessary to point out that the patentee in that case was protecting his profits from manufacturing the products by forbidding price competition from a competitor licensed to manufacture and sell the same product. In the case at bar, appellees are not engaged in manufacturing and selling the same product as the licensees. Consequently the price-fixing provisions in the licenses cannot be said to protect against destructive competition the reward which appellees seek from their patent monopoly.

The difficulty with this distinction, however, is that it ignores the one prior decision of this Court upon which the *General Electric* rule appears to have been based. In *Bement v. National Harrow Co.*, 186 U. S. 70, this Court held that a patent holding company, whose sole business was the licensing of manufacturers, could validly fix the price at which a licensed manufacturer was to sell the patented product. In holding that this price-fixing provision of the license did not violate the antitrust laws, the Court said (p. 93):

The provision in regard to the price at which the licensee would sell the article manufactured under the license was also an appropriate and reasonable condition. It tended to keep up the price of the implements manufactured and sold, but that was only recognizing the nature of the property dealt in, and providing for its value so far as possible. This the parties were legally entitled to do. The owner of a patented article can,



of course, charge such price as he may choose, and the owner of a patent may assign it or sell the right to manufacture and sell the article patented upon the condition that the assignee shall charge a certain amount for such article.

2. The rationale of the *General Electric* decision and its relationship to the *Bement* decision can best be understood by tracing the development by this Court of the principles which determine the scope of the patent privilege. The argument had early been advanced that, since a patentee could withhold his patented invention from anyone or everyone, he could license anyone or everyone to use his invention on any condition he pleased. This argument was based upon the premise that a patent right is a property right and that a patentee, as a property owner, can do whatever he chooses with it. This Court, however, flatly rejected the contention. It pointed out that, although a patentee's interest in his patent has many of the attributes of property ownership (cf. *United Shoe Machinery Co. v. United States*, 258 U. S. 451, 463, *Ethyl Gasoline Co. v. United States*, 309 U. S. 436, 456), it does not follow that he may use his patent right in order to reap a reward unrelated to the purpose for which it was given to him or in a manner otherwise inconsistent with the public interest. See *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20; *Motion Picture Patents Co. v. Universal Film*

Co., 243 U. S. 502; *United States v. Schrader's Son, Inc.*, 252 U. S. 85; *United Shoe Machinery Co. v. United States*, 258 U. S. 451; *Carbice Corp. v. American Patents Corp.*, 283 U. S. 27; *International Business Machines Corp. v. United States*, 298 U. S. 131; *Leitch Mfg. Co. v. Barber Co.*, 302 U. S. 458; *Morton Salt Co. v. Suppiger Co.*, No. 49, this Term, decided January 5, 1942; *B. B. Chemical Co. v. Ellis*, No. 75, this Term, decided January 5, 1942. For example, a patentee who himself manufactures the patented article has absolute ownership of it and may sell it to anyone he pleases, or, if he wishes, may withhold it from sale, but it has consistently been held that the patent right does not entitle him to sell the article on conditions which are opposed to the public interest. See, e. g., *Adams v. Burke*, 17 Wall. 453; *Hobbie v. Jennison*, 149 U. S. 355; *Keeler v. Standard Folding Bed Co.*, 157 U. S. 659; *Bauer & Cie v. O'Donnell*, 229 U. S. 1; cf. *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502; *Missouri v. Bell Telephone Co.*, 23 Fed. 539 (C. E. D. Mo.).<sup>24</sup>

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<sup>24</sup> One of the earliest and most lucid statements of the principle that a patentee may not use his patent privilege to impose restrictions or limitations which are contrary to the public interest is found in *Missouri v. Bell Telephone Co.*, *supra*, in which Circuit Judge (later Justice) Brewer said (pp. 540-541): "There is no peculiar sanctity hovering over or attaching to the ownership of a patent. It is simply a property right, to be protected as such. Starting from that

It is clear, then, that the mere existence of a patent right does not justify the patentee in imposing any limitation or restriction which he pleases in a patent license. To the contrary, such a limitation or restriction is valid only if it is within the scope of the patent privilege. In determining the scope of the patent privilege, little aid can be gained from the specific provisions of the patent law. For the statute which creates the patent privilege does not purport to define in precise terms the manner in which the privilege may be enjoyed. It specifically authorizes the assignment of the privilege (35 U. S. C. § 45), but it contains no provision authorizing the patentee to license others. The right to license arises simply because the patentee's interest is in the nature of a property interest and the rules of general law permit waiver of the right to protect that interest in an infringement action. Accordingly, we must look to the general purpose of the patent statute, rather than to any of its specific provisions, to determine

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as a basis, while every property owner may determine for himself to what he will devote his property, yet the moment he puts that property into what I perhaps may, for lack of a better expression, define as the channels of commerce, that moment he subjects that property to the laws which control commercial transactions. \* \* \* Whenever the property is put into those channels, it is put within the power of the public, speaking through its legislature, or the power of the court enunciating general rules operative upon such transactions, to modify leases, modify licenses, control duties."

whether a restriction in a patent license, which would normally be invalid because contrary to the public interest in free competition, may nonetheless be justified as a proper exercise of the patent monopoly.

The patent law was enacted pursuant to the constitutional authority of Congress to make laws which "promote the progress of science and useful arts," and it has consistently been interpreted, consonant with that constitutional provision, as intended primarily to benefit the public at large by encouraging the development of new inventions: *Pennock v. Dialogue*, 2 Pet. 1; *Kendall v. Winsor*, 21 How. 322, 327-328; *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502. There would be little incentive to develop new inventions if the ideas of the inventors could immediately be exploited by others; for that reason, the inventors are given an exclusive right to make, vend, and use the patented product or process. But, as we have stated, the scope of the right to make, vend, and use is limited by the public interest in the development of new inventions which is the reason for the creation of the right. Consequently, a requirement or restriction in a patent license which cannot be justified as furnishing an incentive to the development of new inventions or which, even though furnishing such an incentive, runs

afoul of some other and paramount public policy,<sup>25</sup> cannot be sustained. See cases cited pp. 48-49, *supra*.

The decision which most clearly enunciates this principle is *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502. In that case the plaintiff owned patents covering a mechanism used in motion-picture projecting machines. The plaintiff granted a license which permitted the licensee to manufacture and sell machines embodying the invention but which provided that the licensee should require each purchaser (1) to pay the plaintiff an additional charge graduated by the size of the theatre in which the machine was to be used, and (2) to use the machine only in the exhibition of films designated by the patentee. The defendant, a purchaser, violated both requirements and was sued for infringement of the patent. In holding the graduated royalty provision invalid, this Court said (p. 519):

A restriction which would give to the plaintiff such a potential power for evil over an industry which must be recognized as an important element in the amusement life of

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<sup>25</sup> For example, the Court has consistently limited use of the patent monopoly by reference to such broad considerations of policy as the reluctance of the law to allow restraints on the alienation of chattels and the public interest in the preservation and enforcement of unfettered competition and a free market. *Straus v. Victor Talking Mach. Co.*, 243 U. S. 490, 500-501; *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502.



the nation, under the conclusions we have stated in this opinion, is plainly void, because wholly without the scope and purpose of our patent laws and because, if sustained, it would be gravely injurious to that public interest, which we have seen is more a favorite of the law than is the promotion of private fortunes.

And in holding invalid the tying clause restricting the films that might be used in the machines, the Court said (p. 516):

\* \* \* we are convinced that the exclusive right granted in every patent must be limited to the invention described in the claims of the patent and that it is not competent for the owner of a patent by notice attached to its machine to, in effect, extend the scope of its patent monopoly by restricting the use of it to materials necessary in its operation but which are no part of the patented invention, or to send its machines forth into the channels of trade of the country subject to conditions as to use or royalty to be paid to be imposed thereafter at the discretion of such patent owner. The patent law furnishes no warrant for such a practice and the cost, inconvenience and annoyance to the public which the opposite conclusion would occasion forbid it.

Two decisions of this Court prior to the decision in the *General Electric* case expressed a view considerably at variance with all of the other cases we have cited. We have already mentioned *Bement v.*

*National Harrow Co.*, 186 U. S. 70, 91, where in upholding a price-fixing provision in a manufacturing license, the Court stated, "the general rule is absolute freedom in the use or sale of rights under the patent laws of the United States." And in *Henry v. Dick Co.*, 224 U. S. 1, the Court, relying upon the *Bement* decision, held that a patentee was legally entitled to sell a patented machine on condition that it be used only in connection with unpatented articles manufactured by the patentee. In the *Motion Picture Patents* case, however, the Court expressly overruled the *Dick* case and enunciated principles with respect to the proper scope of the patent monopoly totally inconsistent with the statement which we have quoted from the *Bement* case.

Accordingly, when the *General Electric* case came before this Court, the Government contended that the rule of the *Bement* case was no longer law. Although the Court rejected the contention and followed the *Bement* decision, it did so, not upon the theory, expressed in the *Bement* case, that a patentee has "absolute freedom in the use" of his patent right, but on the narrower ground that a price-fixing provision in a manufacturing license is "normally and reasonably adapted to secure pecuniary reward for the patentee's monopoly" (272 U. S., at 490). In so ruling, the Court was careful not to cast doubt upon the principles which it had previously enunciated in the *Motion Picture Patents* case.

In the light of this historical survey, it seems clear that the decision in the *General Electric* case must be taken to stand for the proposition that the insertion of a price-fixing provision in a patent license agreement is related to the purpose for which the patent monopoly is given and is not inconsistent with the public interest. Indeed, the decisions in the *Motion Picture Patents* case and the *General Electric* case can be reconciled only on the ground either (a) that the Court believed that the public interest in preventing price-fixing is of less significance than the public interest in preventing patentees from using their patents to control the purchase of unpatented articles by their licensees, or (b) that it believed that a price-fixing provision is more directly related than a tying clause to the purpose for which the patent monopoly was created.

In urging reexamination of the *General Electric* case, therefore, we are not contending that this Court should adopt any new principle of law. Our contention is rather that the settled rules controlling the scope of the patent monopoly were misapplied by the Court to the particular restriction involved in the *General Electric* case. For we believe it entirely plain, at least in the light of present conditions, that a price-fixing provision in a patent license has no reasonable relation to the purpose for which the patent monopoly was created and seriously contravenes the paramount public interest in free competition.

3. As we have stated, the purpose of conferring upon inventors the exclusive right to make, vend and use their patented product or process is to benefit the public at large by giving an incentive for the development of new inventions. But surely incentive to inventors cannot be urged as a reason for reading into the exclusive right to make, vend and use a right to fix prices at which others, licensed to practice the invention, may sell the patented article. Corporate enterprises may, to be sure, enhance the reward from their patents if they can sell a price-fixing system together with their patented inventions, but the relation between such a reward and the encouragement of new inventions is obviously too remote and indirect to bring the sale of such a price-fixing system within the scope of the patent privilege.

Appellees may argue, however, that since a patentee can retain the exclusive right to manufacture and vend and thus exercise absolute control over the price which purchasers must pay for the patented article, there is no reason for refusing him the right to license another to manufacture and fix the price at which the licensee may sell. This is merely a variation of the argument that is made for allowing the manufacturer of an article, patented or unpatented, to fix resale prices. In such a case the manufacturer can sell directly to the ultimate consumer at any price he chooses. Consequently, it may be said that the public is no worse off if

the manufacturer elects to distribute through middlemen and fixes the prices at which they shall resell. However, it has always been the rule that when the owner of any article of commerce parts with his ownership of the article, he has no right to restrict subsequent dealing in that article. *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373; *Bauer v. O'Donnell*, 229 U. S. 1; *Straus v. Victor Talking Mach. Co.*, 243 U. S. 490; *Boston Store v. American Graphophone Co.*, 246 U. S. 8.

The fundamental fallacy in the contrary argument is the assumption that the economic effect of permitting a patentee to fix prices for his licensees is precisely the same as the economic effect of permitting him to make the article himself and to sell it at any price he chooses. In other words, the argument assumes that the patentee is merely creating a quasi-agency by which he employs another to do exactly what he himself could do. In fact, this is almost never true. If the patentee is not interested in producing the article himself, the obvious purpose of the price-fixing provisions is to eliminate competition among licensees who are able collectively to produce on a scale which a single manufacturer could never attain. On the other hand, if the patentee licenses others to compete with him in the manufacture of the patented article, the purpose and effect is generally to establish a price-fixing scheme for an entire industry and thus to ward off potential competition. In



either event, the incentive which licensees would otherwise have to develop competing inventions that would be equally or more successful, or to attack doubtful patent claims in the courts, is destroyed. The result, far from benefitting the public by encouraging the development of new ideas, is to deprive the public of the benefits of competition.

When a patentee chooses to exploit his patented invention himself, any controls which he may derive by virtue of the patent over the industry to which the patent relates must necessarily flow from the merits of the invention itself. This is not true, however, where, instead of making the article himself, the patentee seeks his reward by licensing others to exploit his invention. For, as the records in this case and in the *Ethyl* case demonstrate, a patentee who licenses others to make the patented article and who is enabled to sell a price-fixing scheme together with his patented invention, may secure domination over the trade in the article entirely irrespective of the merits of his particular invention.<sup>26</sup> In this case, for example, by virtue of

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<sup>26</sup> Other examples of the use of patents to control methods of distribution and prices for all, or a substantial portion of an industry, are found in numerous antitrust cases pending or in the course of trial in the courts. *United States v. General Electric Co.*, Civil Action No. 1364, D. C. D. N. J.; *United States v. American Optical Co.*, Civil Action No. 10-391, D. C. S. D. N. Y.; *United States v. Bausch & Lomb Optical Co.*, Civil Action No. 10-393, D. C. S. D. N. Y.; *United States v. Hartford Empire Co.*, Civil Action No. 4426, D. C. N. D. Ohio; *United States v. United States*

patenting a single discovery relating to the shape and position of the inserted section of a bifocal lens, appellees have succeeded in putting into effect a nation-wide price-fixing scheme which eliminates all price competition between persons engaged in the manufacture, distribution, and sale of finished Univis lenses. An even more striking example was presented to this Court in the *Ethyl Gasoline* case. There the Ethyl Corporation, relying on the *General Electric* rule, urged that it was legally entitled to set up a licensing system which dominated and controlled the marketing of 70 percent of all the gasoline sold in the United States. Such examples become more significant when it is noted that the ownership of patents is becoming increasingly concentrated in corporate interests.<sup>27</sup>

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*Gypsum Co.*, Civil Action No. 8017, D. C. Dist. Col.; *United States v. The Wayne Pump Co.*, Criminal Nos. 32597-32598, D. C. N. D. Ill.

<sup>27</sup> The testimony of Conway P. Coe, Commissioner of Patents, before the Temporary National Economic Committee shows that during the period from 1921 to 1938 the number of patents issued to large corporations (corporations with assets over \$50,000,000) rose from 5 percent of the total number of patents issued in 1921 to 17.2 percent of the total number of patents issued in 1938 (*Hearings before the Temporary National Economic Committee: Part 3, Patents, Proposal for Changes in Law and Procedure*, p. 1129, Ex. 187). During the same period the number of patents issued to small corporations (corporations with assets of less than \$50,000,000) increased from approximately 20 percent of the total number of patents issued in 1921 to 34.5 percent of the patents issued in 1938 (*ibid.*). During the year 1938 the total number of patents issued to all cor-

In the light of the foregoing instances of the use of patents to control prices and methods of distribution in entire industries,<sup>28</sup> we believe the assertion is justified that the rule in the *General Electric* case that a patentee has power to fix prices for his licensees not only finds no justification in the purpose for which the patent monopoly is granted, but also has in fact operated in a manner inconsistent with the public interest in free competition. Since the *General Electric* case was decided, this Court has given increasing vitality to the prohibitions against tampering with the price structure of articles in commerce by holding that all attempts to fix prices are illegal *per se*, regardless of the so-called "rule of reason." Although the first statement of the principle is found in *United States v. Trenton Potteries*, 273 U. S. 392, it was not until the recent

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porations, including foreign corporations, was 57.1 percent of the total number of patents issued (*ibid.*).

Even these figures, however, do not reveal the full extent of concentration of patents in the hands of corporations. Commissioner Coe stated that many of the industrial patents are owned by persons who are either officers of various corporations and permit those corporations to exploit the patents, or the patents are under the control and exploitation of corporations under various license agreements (*Hearings before the Temporary National Economic Committee: Part 2, Patents, Proposal for Changes in Law and Procedure*, p. 847). In 1936 Commissioner Coe, testifying before the House Committee on Patents, stated, "I do not say the day of the individual inventor is gone, Mr. Chairman, but I think it is rapidly fading" (*Hearings before Committee on Patents on H. R. 4523, 74th Cong., 1st Sess. (1936)*, 1068).

<sup>28</sup> See also the instances cited in note 26, pp. 58-59, *supra*.

decisions of this Court in *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, and *United States v. Socony-Vacuum Oil Corp.*, 310 U. S. 150, that the sweeping scope of the doctrine became clear. A public policy so strong that it taints with illegality every other kind of price-fixing arrangement should not be required to give way in this one situation, particularly in the absence of countervailing considerations of public interest derived from the patent law. We submit, therefore, that the result reached in the *General Electric* case is wrong and that, if necessary for the decision of this case, it should now be overruled.

C. APPELLEES' USE OF THEIR LICENSING SYSTEM TO ENHANCE THEIR PROFITS BY OFFERING PRICE PROTECTION TO CUSTOMERS IS NOT A PROPER EXERCISE OF THE PATENT PRIVILEGE

The argument thus far has been directed to establishing the invalidity of the license agreements, considered individually. But even if, so considered, they should be deemed valid, the licensing scheme when viewed in its entirety is plainly illegal. Nothing in the patent law or the decisions of this Court indicates that a patentee may restrict trade in articles upon which he holds a patent to an extent greater than is necessary to enable him to secure his legitimate reward for his invention. The statute defines that reward as the monopoly of making, using, and vending the patented article. While a patentee may secure the pecuniary return from his monopoly either by exploiting it himself or by sell-

ing to others the right to do so, he is not entitled to enhance his profits from the patent monopoly by using the patent to protect others from competition. *Interstate Circuit v. United States*, 306 U. S. 208; *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436.

In this case it is apparent that appellees did not grant licenses for the purpose of securing a pecuniary reward from the exploitation of the idea which they had patented, because the licenses are royalty free. Appellees' sole monetary return incident to the licenses results from the provision which requires the finishing licensees to purchase blanks for making Univis lenses from the only company licensed to manufacture such blanks, the Univis Lens Company. In other words, appellees' compensation is derived entirely from sale of the blanks embodying the patented idea and in no way from the permission granted to the licensees to manufacture finished lenses from the blanks.

Assuming that their patents give appellees the monopoly of manufacturing the blanks and that they have absolute freedom in selecting their customers, it does not follow that they may induce customers to purchase blanks by offering to protect them against competition in the sale of finished lenses. Nevertheless, the record plainly shows that the licensing scheme was used solely for that purpose. The Lens Company advertised in the trade journals that its distribution was re-



stricted to those adhering to approved standards of practice and competitive methods, thus eliminating about 80 percent of any licensee's competition (Ex. 44, R. 324-d). In corresponding with applicants, the Lens Company stated that it had "a very strong protective policy, by which distribution is confined to ethical channels" (Ex. 44, R. 357). Another applicant was advised that "Our policy, in the interest of protection of the ethical element, eliminates price-cutting or otherwise undesirable optical outlets" (Ex. 44, R. 349). Likewise, appellees stated that they would deal only with "ethical" optometrists who maintained prices and that they would police the licensee's territory to make certain that all licensees did so (Ex. 45, R. 405).

This price-fixing scheme has obvious attractions to the trade. Although a wholesaler pays an average price of \$3.25 a pair for blanks, he is guaranteed that none of his competitors will sell finished lenses to prescription retailers at less than the minimum price of \$7 a pair (R. 8-9, 51-52, 63). In turn, the prescription retailer, as well as the finishing retailer who pays \$4 a pair for blanks, is assured that the minimum price to consumers will be \$16 for white lenses and \$20 for tinted lenses (Ex. 6, R. 212). Since the licensees' profits are made dependent upon their guaranteed spread, appellees may be able to charge a higher price for blanks than otherwise and thus enhance their own profits. But their ability to do so results from

affording to the licensees protection against competition rather than from granting to them a right to exploit the patented invention.

The record leaves no doubt that both appellees and their licensees understood that the licensing system was to be used to maintain a noncompetitive distribution system. Appellees have generally refused to grant licenses without the approval of their licensees (Ex. 45, R. 417, 422). In 1939 appellees informed an applicant that, "We have turned down during the last three months at least six licenses from Oregon because each one came from a town in which we have an active licensee" (Ex. 45, R. 422). Likewise, the licenses provide that the licensees shall assist appellees in securing evidence and enforcing the agreements (Exs. 4, 9, R. 210, 216).

It is also significant that the licensees were quick to come to the aid of appellees when there was danger of another company placing on the market a similar type of lens. In the fall of 1939 Titmus Optical Company announced its intention to market a bifocal lens blank similar in appearance to the Univis bifocal lens blank (R. 115, Ex. 20, R. 239). The Univis Corporation first notified the company that it would be sued for patent infringement (R. 115, Ex. 20, R. 240). Later, appellees requested the wholesaler licensees to write letters to the Titmus Company canceling and threatening to cancel orders if that company marketed the competitive bifocal lens (R. 115-116, 676-677). The wholesaler licensees did as suggested and as a result

the Titmus Company abandoned its plans (R. 116, 677).<sup>29</sup>

It is apparent from appellees' assertions as to the benefits of the licensing system and from the manner in which the system actually operated, that appellees were attempting to sell lens blanks by offering their customers the opportunity to accomplish a result which would have been illegal if done by concerted action of the customers alone. In other cases the Court has not hesitated to strike down similar schemes for evading the law. *Interstate Circuit v. United States*, 306 U. S. 208; *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436.<sup>30</sup>

<sup>29</sup> The court below properly found that such practices are not countenanced by the patent monopoly of The Univis Corporation and granted an injunction restraining the appellees from such activities. Unquestionably the suppression of potential competition is illegal. *Eastern States Lumber Ass'n v. United States*, 234 U. S. 600; *Paramount Famous Corp. v. United States*, 282 U. S. 30. However, the court failed to observe that this was but an incident which is indicative of the illegality of appellees' entire licensing system.

<sup>30</sup> In the *Ethyl* case the District Court, in referring to the illegal restraint accomplished by means of the licensing system, said (27 F. Supp. 959 at 965):

"\* \* \* Defendants, through these separate agreements, have accomplished what the refiners, without the defendants' aid, could achieve only by a concerted refusal to deal with the jobbers who did not maintain 'business ethics.' The defendants can fare no better with their system of separate agreements than could the refiners if they formed such a combination. See *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S. 373, 408, 31 S. Ct. 376, 55 L. Ed.

In the *Interstate Circuit* case the contention was made that restrictions contained in agreements between a copyright owner and his licensees were legal because they constituted a legitimate exercise of the copyright monopoly. This Court, however, rejected the contention on the ground that the evidence showed that the purpose of the restrictions was to suppress competition among the licensees rather than to protect the monopoly of the copyright owners. The Court stated (p. 230):

Even if it be assumed that the benefit to the distributor from the restrictions is one which it might have secured through its monopoly control of the copyright alone, that would not extend the protection of the copyright to the contract with Interstate and to the resulting restraint upon the competition of its business rivals.

A contract between a copyright owner and one who has no copyright, restraining the competitive distribution of the copyrighted articles in the open market in order to protect the latter from the competition, can no more be valid than a like agreement between two copyright owners or patentees. \* \* \*

If effect is to be given to the principles enunciated in the *Interstate Circuit* case, we submit that appellees should be enjoined from continuing to use any part of their licensing system. Each agreement, standing alone, is illegal; the licensing

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502. The agreements between the defendants and their refiner licensees accordingly constitute a forbidden restraint of trade. \* \* \*

system in its entirety is a scheme to evade the prohibitions of the law against restraints on free and open competition. In such circumstances, "The patentee, like \* \* \* other holders of an exclusive privilege granted in the furtherance of a public policy, may not claim protection of his grant by the courts where it is being used to subvert that policy." *Morton Salt Co. v. Suppiger Co.*, No. 49, this Term, decided January 5, 1942.

### III

#### APPELLEES' SCHEME FOR CONTROLLING THE DISTRIBUTION AND SALE OF UNIVIS LENSES IS NOT WITHIN THE PURVIEW OF THE MILLER-TYDINGS AMENDMENT

Appellees contend that even if their patent licensing system is invalid, they cannot be charged with violating the Sherman Act because the identical restraints of trade are contained in the resale price-maintenance contracts entered into between the Lens Company and the wholesalers and retailers. These contracts, appellees assert, are within the exemption created by the Miller-Tydings Amendment to Section 1 of the Sherman Act.<sup>21</sup>

The Miller-Tydings Amendment exempts from the prohibition against contracts in restraint of trade, "contracts or agreements prescribing

<sup>21</sup> This defense is, of course, not available to appellees with respect to restrictions imposed upon wholesalers or retailers in the District of Columbia or in those states which have no resale price-maintenance laws.



minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor." The court below held that this statutory provision affords no justification for appellees' price-fixing system, because appellees were seeking to fix prices on a product which they neither manufactured nor sold. This conclusion we believe to be plainly correct, not only for the reasons stated by the court but for the additional reason that appellees devised the contracts as a subterfuge to further a plan which contravenes the spirit and purpose of the Miller-Tydings Amendment.

**A. APPELLEES HAVE NO LEGAL STANDING UNDER THE MILLER-TYDINGS AMENDMENT TO PRESCRIBE PRICES FOR FINISHED LENSES**

An examination of the contracts plainly demonstrates that the product to which they apply by their terms is not the commodity with which we are concerned. Typical contracts between the Lens Company and the wholesalers, the finishing retailers and the prescription retailers are in evidence (Exs. 10, 12, 13, R. 217, 224, 228). In each of the contracts the Lens Company is designated as the "Manufacturer". The "Manufacturer" is described as engaged in the production of eyeglass lenses which are distributed and sold under the trade-mark of the "Manufacturer", "who is the owner thereof", and particularly under the trade-

mark "Univis". The agreements further recite that the wholesaler and the finishing retailer are engaged in the sale of eyeglass lenses under the trade-mark "Univis", "as supplied to it by the Manufacturer". The wholesalers and both classes of retailers agree that they will not offer for sale such eyeglass lenses at less than the minimum resale prices fixed by the "Manufacturer".

The contracts by their express terms are applicable only to eyeglass lenses manufactured by the Lens Company and sold under the trade-mark "Univis," which is claimed to be the property of the Lens Company. But the Lens Company does not make eyeglass lenses;<sup>32</sup> it makes Univis lens blanks which it sells to finishing licensees who produce eyeglass lenses from the blanks. That has been the consistent position of appellees in attempting to defend their patent licensing system; indeed, they stress the fact that the blank sold by the Lens Company is not a lens which can be used as an eyeglass. It is true that the lens blank is only useful for making an eyeglass lens, but it does not become such until the purchaser has ground, polished, shaped and edged it.<sup>33</sup> When the pur-

<sup>32</sup> The evidence shows that the Lens Company makes a few special lenses. These do not, however, amount to more than one-tenth of one percent of its business (R. 67).

<sup>33</sup> The contract between the Lens Company and the wholesaler licensees describes the wholesaler as a manufacturer in the following language (R. 218):

"The Wholesaler is also a manufacturer in that further manufacturing steps are taken by said Wholesaler under the

chaser of the lens blanks sells the finished lens, he does not resell the product which he bought but makes the initial sale of a finished eyeglass lens. Consequently, the contract by its terms is inapplicable because there is no resale of an eyeglass lens purchased from the Lens Company.

The same considerations require the conclusion that the Miller-Tydings Amendment does not protect appellees even apart from the particular terms of the contracts. Insofar as sales by finishing licensees are concerned, the agreement fixing the price of the eyeglass lenses relates to the first sale of such lenses by the producers thereof, and consequently is not an agreement "prescribing minimum prices for the resale of a commodity" within the meaning of the Amendment. A second objection which is applicable to all of the price-fixing agreements, including those relating to resales by prescription retailers of lenses purchased from finishing wholesalers, is that the lenses are not "a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer of such commodity." As

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supervision of the Manufacturer in creating said lenses supplied by the Manufacturer as blanks \* \* \* and it is essential that the quality of the lens blanks so manufactured by the Manufacturer be continued by subsequent manufacturing operation of the Wholesaler and that said trade-marks, brands and names of the Manufacturer, and particularly the trade-mark "Univis" and the straight top of insert be continued to identify the lenses ground from the lens blanks of the Manufacturer." [Italics added.]

stated in the contracts, the trade-mark which forms the alleged basis for the contracts is the trade-mark "Univis," owned by appellees. But appellees are neither producers nor distributors of eyeglass lenses bearing that trade-mark. The eyeglass lenses are produced by the finishing licensees and distributed by them and the prescription retailers, none of whom is claimed to be an owner of the "Univis" trade-mark. Consequently, sale of the lenses under the trade-mark "Univis" is not a sale under the trade-mark of the producer or distributor and the commodity is therefore not within the class of commodities with respect to which resale price-maintenance contracts are legal.

In striking down the agreements the court below said (R. 667) :

This case is not unlike *Mallinson Fabrics Corp. et al. v. R. H. Macy & Co.*, 14 N. Y. S. 2, 203. In that case the New York statute relating to the fair trade agreements was considered. The action was brought by the manufacturer of fabrics sold under the name "Mallinson's Pure Silk Pussy Willow" and by a coplaintiff, a dress manufacturer. The plaintiffs sought to restrain the defendant from advertising or offering for sale or selling dresses under the trade-mark at a price lower than that fixed by the plaintiffs. The defendant's "Pussy Willow" dresses were not made by Mallinson, nor indeed were they those of Siegel. They were made by an un-

named manufacturer. The court observed: "As I perceive it, this dress is not a 'commodity' produced or owned 'by either plaintiff.' " The attempt of the Lens Company, under the guise of the protection of the statute, to control the resale of that which it does not manufacture, is ineffectual. For the same reason its "fair trade" agreements with "Wholesaler" and "Finishing Retailer" are likewise unenforceable. The latter do not resell the product or commodity of the Lens Company.

Appellees' inability to bring the contracts within the terms of the statute is not due to a mere technicality.<sup>34</sup> The primary purpose of statutes legalizing fair trade agreements is to protect the reputation and good will of the producer of a product by permitting him to fix prices on articles which are shown by the trade-mark or brand name to have been produced by him. Cf. *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U. S. 183. Here the label or trade-mark "Univis" does not represent that the finished lens has been produced by the Lens Company; rather, the product purchased by the

<sup>34</sup> Even if the argument be regarded as technical, appellees must be held to strict compliance with the statute. Since the Miller-Tydings Amendment creates an exception to a general act, it must be narrowly construed, whether the statute is remedial (*United States v. Dickson*, 15 Pet. 141, 165) or penal (*Spokane & Inland R. R. v. United States*, 241 U. S. 344, 350; *United States v. McElwain*, 272 U. S. 633, 639; *United States v. Scharton*, 285 U. S. 518, 521).



public is produced by the various finishing licensees, each having his own standard of workmanship. If "Univis" merely purports to denote characteristics or qualities of the lenses, it is not even a valid trade-mark.<sup>35</sup> In any event, appellees are not entitled to affix their trade-mark to the product of the finishing licensees and thus secure the right to fix the price at which the licensees may sell.

B. THE AGREEMENTS ARE ILLEGAL BECAUSE THEY ARE DESIGNED TO ACCOMPLISH PURPOSES WHICH ARE NOT PERMISSIBLE UNDER THE MILLER-TYDINGS AMENDMENT

For the reasons we have advanced, the contracts here involved cannot be sustained even if consideration is restricted to the price-fixing feature alone. But the illegality of the contracts is even more apparent when they are viewed in their entirety. In the discussion of appellees' scheme (pp. 61-67, *supra*), we pointed out that the plan did not contemplate price fixing alone but was designed to give appellees complete dominion over all distribution and sale of Univis lenses with absolute power to determine who shall be allowed to engage in the business. It seems obvious that if the so-called "fair trade contracts" relied upon by appellees are

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<sup>35</sup> A trade-mark to be valid must denote the origin of the product and is insufficient if merely descriptive of the product, its qualities, ingredients, or characteristics. *Manufacturing Co. v. Trainer*, 101 U. S. 51; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537; *Columbia Mill Co. v. Alcorn*, 150 U. S. 460.

merely another device to carry out this illegal scheme, as we believe it plain they are, they must be stricken down regardless of whether any one feature of the contracts might be valid.<sup>36</sup>

A casual reading of the agreements suffices to show that they are no ordinary resale price-maintenance contracts. In each instance the wholesaler or retailer agrees with the Lens Company that he will sell only to customers or classes of customers designated by the Lens Company. The invalidity of such a restriction on the freedom to deal with others has been discussed (pp. 29-30, *supra*), and nothing in the Miller-Tydings Amendment removes the taint of illegality. The contracts also contain a clause whereby the Lens Company in effect agrees not to fix lower resale prices for any other dealer in the same class. This provision strongly indicates horizontal price fixing between competitors through the medium of the Lens Company rather than an attempt to protect the name and good will of the Lens Company. See *Interstate Circuit v. United States*, 306 U. S. 208. If there is any element of horizontal price fixing involved, the contracts contravene the express provision in the Miller-Tydings Amendment to the effect that the Amendment "shall not make lawful any contract or agreement, providing for the establishment or

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<sup>36</sup> Compare *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, in which this Court affirmed a decree enjoining the use of jobber licenses without deciding whether such licenses might be valid for some purposes.

maintenance of minimum resale prices \* \* \*, between manufacturers, or between producers, \* \* \* or between persons \* \* \* in competition with each other."

But even more revealing than the language of the contracts are the facts surrounding their execution. The agreements were made in 1940, but they added nothing to the existing patent licensing agreements which date back to 1931. The Lens Company mailed out with the contracts a letter which stated in part (Ex. 14, R. 233):

Without changing the basic Unavis licensing structure, we propose to supplement the present license with a Fair Trade Agreement based on the Tydings-Miller Act <sup>And</sup> or the Fair Trade Acts of the various States.

It is difficult to imagine circumstances which would indicate more clearly an intent to pervert the Miller-Tydings Amendment by sham contracts designed to cloak an illegal scheme. One of the requirements of the Amendment is that the commodity with respect to which resale prices are fixed must be one "which is in free and open competition with commodities of the same general class produced or distributed by others." This provision plainly evidences the intent of Congress that resale price maintenance contracts shall not be used to perpetuate monopolistic schemes. Since the contracts here involved were put into effect to cover up an illegal scheme and by their express terms endeavor to perpetuate that scheme, they should be held illegal as a manifest subterfuge which vio-

lates the spirit and purpose as well as the letter of the law.

#### IV

##### THE PRESCRIPTION RETAILER LICENSES ARE ILLEGAL

Appellees have taken a cross-appeal from that part of the decision below which strikes down the agreements by which appellees fix the prices at which prescription retailers, who purchase finished lenses from licensed wholesalers, shall resell lenses to the public. For the reasons stated in the preceding section of this brief, these agreements cannot be sustained as resale price-maintenance contracts within the terms of the Miller-Tydings Act. Likewise, if this Court accepts the contention made in Point II (pp. 31-67, *supra*) that appellees may not validly restrict the manner in which finishing licensees shall deal in finished lenses, it would follow as a matter of course that they may not impose restrictions of the same character on prescription retailers who are engaged only in reselling the finished lenses purchased from the wholesaler licensees. But even if it should be held that the finishing licenses are valid, the prescription retailer licenses must still be held illegal.

It is not disputed that if the prescription retailers are engaged in reselling a patented article which they purchase from the finishing wholesalers, any agreement fixing the resale price of that patented article is illegal. *Bauer v. O'Donnell*, 229 U. S. 1; *Straus v. Victor Talking Mach.*

*Co.*, 243 U. S. 490; *Boston Store v. American Graphophone Co.*, 246 U. S. 8; *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436. The only defense advanced by appellees is the contention that the prescription retailers perform some function in connection with the manufacture of an article covered by appellees' patents. The uncontradicted evidence shows that the contention is frivolous.

All that a prescription retailer does is to examine the customer and then send to a finishing wholesaler a prescription for glasses, which he either writes out himself or which the customer has previously obtained from an oculist (R. 90, 190-192). In most cases the retailer receives from the wholesaler a pair of spectacles containing lenses finished in accordance with the prescription (R. 88, 90).<sup>35</sup> It is then only necessary to adjust the spectacles by bending the nose and ear pieces of the frame (R. 190-191, 193-194). This operation is in no way related to the practice of the invention claimed by appellees' patents and cannot be magnified into a manufacturing process. It follows, as the court below held, that the prescription retailer is engaged solely in the resale of articles purchased from wholesalers and that, therefore, under settled principles, the agreements fixing his resale prices cannot be justified as a valid exercise of the patent privilege.

<sup>35</sup> Occasionally a prescription retailer chooses to order just the finished lenses and fits them into the spectacle frames himself. At most, this only requires edging the lenses to fit the frame. (R. 88.)



APPELLEES WERE SUBJECT TO THE JURISDICTION OF  
THE DISTRICT COURT

After the filing of the complaint in this case, appellees moved to quash service and dismiss the complaint for lack of jurisdiction (R. 11). This motion raised only the question of venue in the Southern District of New York.<sup>39</sup> The motion, which was heard on affidavits, was denied (R. 45).

Section 12 of the Clayton Act provides that any action under the antitrust laws against a corporation may be brought "not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business" (15 U. S. C. § 22).<sup>40</sup> The only issue on this aspect of the case is whether the facts disclosed by the affidavits show transaction of business in the Southern District of New York within the meaning of Section 12.

The facts are these: Representatives of Univis Corporation, including its vice president, appellee Silverman, solicit licenses and negotiate with prospective licensees in the Southern District of New

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<sup>39</sup> No contention was made that personal jurisdiction over all defendants had not been acquired by service of summonses in accordance with provisions contained in Section 12 of the Clayton Act (15 U. S. C. § 22) and Section 5 of the Sherman Act (15 U. S. C. § 5).

<sup>40</sup> The new Rules of Civil Procedure have not affected this provision. See Rule 82.

York. Representatives of the Lens Company make periodic calls upon licensees in the Southern District of New York, the purpose of these calls, so appellees contend, being to instruct licensees in the finishing of Univis lens blanks and to determine whether lenses finished by the licensees conform to the standards of quality prescribed by appellees. Representatives of appellees also visit optical retailers and dispensers located in the district in an effort to persuade them to purchase Univis lenses from licensees of the Univis Corporation. The Lens Company regularly mails price lists into the district, solicits orders by mail, and ships Univis lenses into the district in response to orders received from licensees located there. The market within the Southern District of New York is one of the largest available to the two corporations. Univis Corporation has approximately 150 licensees in that district, and the Lens Company does a substantial part of its business with such licensees. (R. 13-15, 18, 22-44.)

Under the foregoing facts, the appellee corporations clearly transact business within the Southern District of New York.<sup>4</sup> The situation here is es-

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<sup>4</sup>Indeed, appellees would seem not only to be transacting business in the Southern District but also to have a corporate presence there. See *Connecticut Mutual Life Ins. Co. v. Spradley*, 172 U. S. 602; *Pennsylvania Lumbermen's Mutual Fire Ins. Co. v. Meyer*, 197 U. S. 407; *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245; *International Harvester Co. v. Kentucky*, 234 U. S. 579; *Empire Fuel Co. v. Lyons*, 257 Fed. 890 (C. C. A. 6); *Farmers' & Merchants' Bank*

essentially indistinguishable from that involved in *Eastman Kodak Co. v. Southern Photo Co.*, 273 U. S. 359. The ruling in that case requires affirmation of the order denying appellees' motion to dismiss.<sup>42</sup>

#### CONCLUSION

The decree below, in so far as it dismisses that portion of the complaint which seeks to enjoin appellees from continuing their license agreements with wholesalers and finishing retailers, should be reversed; in all other respects, the decree should be affirmed.

Respectfully submitted.

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MARCH 1942.

*v. Federal Reserve Bank*, 286 Fed. 566 (E. D. Ky.); *Hutchinson v. Chase & Gilbert*, 45 F. (2d) 139 (C. C. A. 2); *Tauza v. Susquehanna Coal Co.*, 220 N. Y. 259.

<sup>42</sup> See also *Sure-Fit Products Co. v. Fry Products*, 23 F. Supp. 610 (S. D. N. Y.); *Hansen Packing Co. v. Swift & Co.*, 27 F. Supp. 364 (S. D. N. Y.).







APR 7 1942

CHARLES ELMORE CROFT  
CLEVELAND

Nos. 855, 856.

## In the Supreme Court of the United States

OCTOBER TERM, 1941.

UNITED STATES OF AMERICA,

*Appellant,*

v.

THE UNIVIS LENS CO., INC. *et al.*,*Appellees.*

No. 855.

THE UNIVIS LENS CO., INC. *et al.*,*Appellants,*

v.

UNITED STATES OF AMERICA,

*Appellee.*

No. 856.

ON APPEAL FROM  
THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

## BRIEF FOR APPELLEES AND CROSS-APPELLANTS.

H. A. TOULMIN, JR.,

ROWAN A. GREER,

FREDERICK S. DUNCAN,

*Counsel for Appellees and  
Cross-Appellants.*

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Nos. 855, 856.

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# In the Supreme Court of the United States

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UNITED STATES OF AMERICA,

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THE UNIVIS LENS CO., INC. *et al.*,

*Appellees.*

No. 855.

THE UNIVIS LENS CO., INC. *et al.*,

*Appellants,*

v.

UNITED STATES OF AMERICA,

*Appellee.*

No. 856.

ON APPEAL FROM  
THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

## BRIEF FOR APPELLEES AND CROSS-APPELLANTS.

### I. STATEMENT OF THE CASE.

The statement in the Government's brief as to the parties, the opinion below and the questions presented is in substance correct.<sup>1</sup>

### II. JURISDICTION.

The cross appeal by the Appellees in No. 856 is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 15 U. S. C. § 29) and Section 238 of the Judicial Code, as amended (36 Stat. 1167, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. § 345).

<sup>1</sup> For convenience the defendants are designated Appellees throughout this brief. All emphasis ours unless otherwise stated.

Probable jurisdiction was noted on February 2, 1942. (R. 714.)

### III. THE ISSUES AND ASSIGNMENTS OF ERROR.

The issues raised by the cross appeal in No. 856 are:

1. The legality of the prescription-licensee license. (Assignments of Error are I to XV inclusive, R. 693-698 and XXXII to XXXVI inclusive, R. 703-705.)

2. The legality of the Fair Trade Agreements under the Miller-Tydings Act. (Assignments of Error are XVI to XXVI inclusive, R. 698-701; XXXVII to XXXIX inclusive, R. 705, and XLI, XLIV, XLV and XLVI, R. 706-707.)

3. Does the record show any improper or unlawful concerted action by the defendants with their licensees to prevent The Titmus Optical Company or any competitor from manufacturing lenses in competition with appellees? (Assignments of Error are XXVII to XXXI, inclusive, R. 701-703, and XLX, XLIII, R. 705, 706.)

4. Were the appellees subject to the jurisdiction of the Court below for the purposes of this suit? (R. 45, 712.)

### IV. STATEMENT OF THE FACTS.

The Government's statement of the facts in this suit in equity is inadequate, incomplete and therefore inaccurate. We, therefore, take the liberty of restating these facts so that the Court will have a clear understanding of our position that the license restrictions here involved are both reasonable and necessary to the enjoyment of the full reward from the patents and the protection of the public interest. The ulterior motives attributed in the Government's brief to the appellees will be seen to have no foundation in fact when a complete and fair statement is made. This resume

is based upon the opinion and the final Findings of Fact by the District Court as reflecting the evidence in the case. (R. 655-682.)

**A. Nature of the Ophthalmic Industry and Facts as to the Method of Doing Business by the Appellees.**

As this Court, through Mr. Justice Brandeis, pointed out in *Chicago Board of Trade v. United States*, 246 U. S. 231, the first test of determining whether there is any violation of the Antitrust Laws is to understand the peculiar nature of the business and industry where the events are alleged to have taken place.<sup>1</sup>

Therefore, before discussing the Sherman Act, here involved, and its applicability to the acts of the appellees, it is proper to first lay before the Court the facts both as to the manufacture of bifocal lenses under the patents here involved as well as to how the licensing system or method of doing business of the appellees fits the existing conditions of such manufacture. It will be found that the Univis license system "promotes competition" in that all competitive bifocal licensees meet on their own merits and anyone qualified can handle or deal in such lenses.

Our State Governments have gone to great lengths, through state examination and control boards of optometry (in addition to control by medical societies), to insure the training and skill of those permitted to prescribe, design

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<sup>1</sup> "Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts." 246 U. S. 231, 238.

and fit lenses.<sup>1</sup> Appellees license only those fully approved by such controlling agencies, medical associations and professional associations. It would be wholly unreasonable to require these appellees, as the Government is seeking to do, to sell to anyone, no matter how unqualified for the manufacturing, technical and professional tasks necessary, when every effort of public agencies has been directed in increasing tempo over the past years to protect the wearer of eyeglasses. The satisfaction of the patient is the very essence of the success of the patented lens under the appellees' licensing system.

The ophthalmologist is a member of the medical profession who both examines eyes and prescribes the type of corrected lenses the patient should purchase, and acts as a physician in surgical and other work to correct the pathological conditions of the eye. He does no designing of the lenses. The optician performs the mechanical work of making the lenses, and also designs the lenses, by working with the patient. A second examination of the patient is made in addition to the first examination of the prescribing physician. It is not enough to have a prescription: someone has to design and fit that prescription to the particular requirements of the particular patient, and the optometrist or optician (prescription or fitting licensee) must perform this service, which is a part of the manufacturing operation in making a complete lens. The optometrist (prescription licensee or fitting licensee) both prescribes and designs lenses. The optician designs and usually grinds. He either does a part or all of the mechanical work himself, or sends it to another optician or a wholesaler-licensee grinder, who has a grinding establishment

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<sup>1</sup> All states have such laws. For instance Alabama's law will be found at Section 2873-2894, Code of 1923 as amended 1935. Code of Alabama. Eyeglasses also now come within the control of the Food, Drug and Cosmetic Act of 1938 because such devices affect public health.

The practice of optometry "is a profession relating to public health." *Pennington v. Behelli*, 59 Pac. (2d) 448 (Calif.).

for manufacturing lenses wholly or partly, according to prescription and design specifications. (R. 85, 88.)

In this industry, manufacturing is not complete until the lenses are fitted and adjusted to the satisfaction of the wearer on the wearer's face by the highly skilled optician or optometrist, both of whom deal with the patient—and only then is a sale made of the completed lenses called for by the patents.

The purpose of eyeglass lenses is to correct optically, by the lens mechanism, the deficiencies of nature in the eye, in order to reproduce the effect of normal vision.<sup>1</sup> This is a highly individual and vitally important matter to the wearer of glasses, both for vision comfort as well as health, it being well known that the nervous system of the eye has a very close relationship to the physical welfare of the individual.

No two individuals have a facial set of characteristics, reading habits, posture, such as the inclination of the head to the body, and occupation, alike. Each one of these factors requires a particular "design" of a pair of glasses to suit the individual's physical makeup, his occupational pursuits and habits, in addition to the prescription for the lenses. Even if two prescriptions should be alike as to defects in the eyes, the design of the lenses otherwise will widely vary. (R. 180). One patient may be an architect whose occupational habits require some near-vision work, a great deal of intermediate vision work by walking over the structures which he is building, and long distance vision in the driving of his car. His eyes may be set wide apart and at different heights in his face, and

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<sup>1</sup> Persons over forty usually experience the necessity of using bifocal eyeglass lenses because of the lack of active muscle adjustment to change the focus of the eyes naturally. This has resulted in the development of eyeglass lenses having two focal points, and, in the case of trifocal lenses, having three focal points. The trifocal lens is one in which the glass insert has an intermediate focal point between the near-vision and distant vision focal points. The corrective curvatures are fixed by the prescription.



he may be either erect or stoop-shouldered—he may have long arms or short arms. His work may markedly contrast with that of a lawyer or surgeon with a great deal of close work to be done. All these factors of “design” must be carefully regulated and adjusted to each individual’s physical and occupational requirements by those who are highly trained specialists in the prescribing, designing and fitting of lenses—no one of these acts is enough to secure the result.

The ophthalmic lens industry is unusual by reason of its inherent character. You cannot make eyeglasses to order in a factory remote from the purchasers of lenses, nor can you make them from stock like ordinary merchandise. There is no such thing as a mass production of eyeglasses. You cannot produce them in a central factory or safely buy them from the counter in a retail store.

“Stage” manufacturing is essential in the making of lenses. Eyeglass lenses can only be prescribed, designed and fitted by one having professional or quasi-professional training and such technical and artisan knowledge as to enable him to make each pair of lenses a custom job, designed, prescribed, ground and fitted for one person only. The whole chain of manufacturing operations from the original “blank” is not complete until the final adjustment and checking of the glasses are performed on the face of the wearer.

“Blanks” are the rough blocks of glass consisting of a distance vision portion and a near-vision portion which must be manufactured in some central plant in a series of general sizes and dimensions and shapes of inserts. Thereafter, these blanks, which are of no use for any purpose except to be made into finished lenses by further manufacturing processes, are shipped to a wholesale grinder or retail finishing licensee grinder, who has intricate machinery and skilled workmen for grinding the optical corrections on these blanks and complying with the design instructions. It is not enough to merely grind the lenses according to the prescription; they must also be ground

according to the design instructions of the skilled licensee in addition to the prescription.<sup>1</sup> It is his instructions that control the grinding, the location of the reading insert and all the other lens design factors.

"If he (prescription retailer) is an optometrist he has refracted the patient's eyes, prescribed Unavis, designed the size, shape, contour of the lens to conform with the patient's peculiar facial characteristics; he has designed the size, heights and positioning of the reading segment to conform to the patient's particular vocation and other personal habits, and he has sent those instructions, after he has planned and designed the lenses, to a laboratory for completion. Then when they are received back he further fits them to the patient's face. He computes the angle of the lenses to give that vision, and that covers it." (Silverman R. 90.)

And the wholesaler grinder, Potter, a Government witness, testified: "The retailer (licensee) sends us the order with the full descriptions and measurements that he requires, and we have to make our lens to correspond with both formula and the measurements." (R. 179.) And when asked as to a typical case of such measurements, he said:

"Well, the instructions have first of all to do with the size of the lens. Then they have to do with the height of the segment, how high the segment is to appear in the lens, and then the amount of decentration in the segment, whether it is to be set in or out. They vary in almost every instance. They are never alike. On one of those orders here, in one case he had the segment decentered out for one eye and in for the other, which means that we have to be doubly careful in a case of that nature." (R. 187.)

The importance of the prescription licensee's operations on the final stage of manufacturing was testified to as follows:

<sup>1</sup> Such design instructions must contain the following elements of instruction: shape, centering and positioning of segment, size of lens, and pupillary width.

"Q. How does the retailer [optician or optometrist] affect the quality of the lens which is finally delivered to the patient?

"A. Well, I am glad you asked that question, because the finest lens made under the finest grinding technique can be ruined to such an extent by an incompetent retailer and it would be of no value to the public at all. For example, I can take the best ground pair of Univis, wherein we put the best that there is to put into lenses in our plant; the wholesaler has done likewise; the retailer through incompetence will design the lenses improperly, position the lenses, and order the lenses in his designing and planning so that the segment is in wrong position, wrong height, wrong decentration; and that pair of lenses would render, in my judgment, worse service than a poor pair of lenses properly designed by the retailer. The retailer's function, in my opinion, is of vital importance." (R. 106.)

"\* \* \* Well, that is to say, presuming that a man works on a linotype machine, if you simply order one pair of Univis bifocals with the focal power, and stop right there, that man in all probability would have a pair of lenses that would not be suited at all for his work. The man with a linotype machine before him might require a trifocal. He may require a lens with a segment pretty well toward the center of the lens. So they determine that. Then there is the matter of determining the reading habits. Some people might read well down on their laps. Others may have a habit or reading up higher. Some may converge more than others, their eyes converge more than others. It is necessary to determine all of these factors and then proceed to design and plan your lenses so that those segments will conform to that design, and so that when they are finally given a finished pair of glasses, the patient can get binocular vision and get the maximum efficiency from their lenses." (R. 107.)

As to the Government's claim that all the prescription licensee does is to merely take a pair of tweezers and adjust and fit the lenses to a patient's face, this is incorrect,

as the Findings of the District Court show where the Court correctly stated the evidence as follows:

“As a matter of practice the retailer licensee who is in direct contact with the customer determines the shape, the centering and the positioning thereof on the face of the wearer and the mounting of the lens in a frame in order to give the maximum vision and comfort to the wearer. The prescription and design instructions for grinding is forwarded to a wholesaler to whom the lens blank has been sold by the Lens Company. The lenses when completed are then in turn delivered to the finishing retailer who adjusts and fits them to the eyes of the wearer to see that they comply with the prescription and design instructions, resulting from the examination of the wearer by the licensee.” (R. 671.)

These major steps in the manufacturing process are essential to the successful use of the lens by the patient. As this Court knows, when any article of manufacture is to be made, particularly an article that is custom made for a particular customer, the actual physical work is often relatively small in importance, compared to the work of the designing engineers who design the apparatus, the inspectors who carefully check it to see that it complies with the design, and the service men who place it in the customer's plant and see that the machinery operates. This prescription licensee fulfills all these manufacturing functions in the lens manufacturing process, which are usually performed in a central plant; he designs, and in many cases prescribes, he inspects and he ultimately acts as the service man in completing the manufacture by installing the custom made article on the patient's face.

Conversely, the distributor who grinds the lenses could not merely mail them or hand them to a patient and expect the lenses to give the patient satisfaction. He could not fill mail orders of patients he had never seen merely from a prescription, without someone else having interpolated the prescription to the particular patient's needs by design

instructions. It is inevitable that there must be someone, such as the prescription licensee or finishing licensee, to complete the manufacturing operation. The lens under these patents is not complete until the work is finished to the patient's satisfaction. It is not until this final step is taken that the lenses of the patents involved herein are sold for the first time as articles of manufacture, finished for use as bifocal eyeglass lenses.

### **B. Three Stages of Manufacture.**

It should be borne in mind that there are three distinct stages of manufacture before the "blank" is of any practical commercial value for use in any way and the "blank" from which the completed or finished lens is made possesses no use and fills no commercial purpose except when used with the end in view of further manufacturing process thereon to produce the finished lens as covered by the various patents of The Univis Corporation. (R. 671, Finding No. III.)

The first stage of manufacture consists of producing the "blank" manufactured out of blocks of glass in which the near vision inserts are fused for the bifocal lenses that are ultimately to be made. In the case of the Univis lens "blank" this requires a forty-four hour process from raw glass to the semi-finished "blank" in order to produce first class lens "blanks" of first quality only. (Ex. L.)<sup>1</sup>

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<sup>1</sup> These steps are explained, covered and described in some of the patents as the earlier steps of manufacture leading up to the final complete lens. For instance, the drawings, specifications and claims of the Watson and Culver patent No. 1,729,654, the Watson and Culver patent No. 1,822,606, and the Watson and Culver patent No. 1,868,863 are devoted exclusively to the making of blanks; while the Watson and Culver patent No. 1,632,208, the Stanley patent No. 1,845,940, the Hancock patent No. 1,876,497, the Stanley patent No. 1,899,777 and the Hancock reissue patent No. 19,142 describe how these blanks are made prior to the completion of the final lens product and claim the lens product itself. Defendants' Exhibit F.



This blank is manufactured by The Univis Lens Company, Inc., under license from The Univis Corporation but it is not useful as an eyeglass lens or for any other commercial purpose until it has been further manufactured by other licensees and finally fitted to the eyes of the wearer through the suitable examination of those eyes and the further processing of the "blanks" by grinding to the prescription of the doctor prescribing the correction necessary in the completed bifocal eyeglass lens. (R. 68-69.)

The second stage of manufacture consists of cutting, grinding and polishing both sides of the "blank" of the first stage to size, shape, design and prescription needs. This stage of the manufacturing process is done by wholesale distributor licensees of The Univis Corporation or retail finishing licensees with proper equipment and skilled operators competent to perform the operation, on order for the prescription licensee. (R. 80 to 85 and Ex. C.)

The third stage or process of manufacture consists of first designing and then cutting, grinding, fitting and adjusting to the facial conditions of the patient-purchaser. This third state is to complete final manufacture of the "blank" by designing, cutting, grinding and fitting to the exact contour of the face of the user, and taking proper fitting steps to guarantee the proper service of the completed lens to the ultimate and particular user and customer.

The function of the prescription, non-grinding licensee, under the Univis license, is not as indicated by counsel for the Government to be the mere adjusting of frames attached to the finished lens. He actually participates in the manufacture of the lens. He "designs" the lens and his function "is of vital importance" because a good pair of lenses, improperly designed, "would render, in my judgment, worse service than a poor pair of lenses properly designed by the retailer." (R. 106.) This testimony is uncontradicted. Various witnesses concurred. His work

is an integral part of the process of manufacture under the patents of The Univis Corporation. Even his fitting of the glasses after manufacture and the receipt of the finished lens from the finisher is a part of the manufacturing process for, as testified to by the Government's witness Cook, "the lens is affected by it" (R. 193), that is, by the final adjusting done by the prescription fitting licensee before release to the patient, the first purchaser of the completed lens.<sup>1</sup>

The Government's witness Potter, a wholesale distributor and grinder, operating one of the largest grinding establishments in this country, testified that this data from the prescription licensee in addition to what is ordinarily referred to as the prescription is necessary to produce a finished lens.

"Q. Taking two prescriptions exactly alike but which are to be used for different persons, can you simply follow the prescription without any further information and have a satisfactory fitting of those eyeglasses?

"A. No, we have to have complete instructions.

"Q. And those instructions come from the licensee or person who is ordering glasses?

"A. They do." (R. 180.)

There are thus these three stages of manufacture: (1) the making of the blanks, (2) the designing and fitting of the prescription to the patient and (3) the grinding of the blanks to the lens prescription and other instructions. The Univis Corporation licenses the blank manufacturer which is The Univis Lens Company; the wholesale and retail grinder and the retail prescriptionist and designer and

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<sup>1</sup> The patient calls upon the prescription or finishing licensee; if the former, then the design estimates are sent with the prescription to the wholesale grinder licensee and then the prescription licensee finishes his work and sells the lens for the first time to the patient. If the patient calls on the finishing licensee all the work is done in his establishment and the first sale is made. There is no difference in practical effect.

fitter, so that all steps of manufacture will be controlled until the final product, the lens, covered by the patents, is sold to the patient to his satisfaction.

The facts further show, without contradiction, that both the blank and the finished lens are always sold in containers bearing the "trademark, brand or name" of The Univis Lens Company and is in "free and open competition with commodities of the same general class produced or distributed by others," because it only constitutes 2½% of the bifocal lenses sold. (Finding XIII, R. 677.)

### C. The Open End Policy of the Univis Licenses.

The policy of the Univis Corporation is to extend its licenses to all in the trade who are competent to do the work. The Court will appreciate that this is not a case of ordinary commercial selling and distribution which can be done without restrictions in the licenses of those licensed.

The lower court found:

"The Univis Corporation has consistently followed an 'open end' license policy by which all licensees of the same class are charged the same license fee and have the same prices fixed for performing the same manufacturing service; and that the licenses are open to all qualified licensees. The basis of its policy is the maintenance of highest standards of quality, service and performance by each licensee at each stage of the manufacturing process. Such policy is founded upon the peculiar nature of the business of manufacturing, prescribing, fitting, and distributing eyeglass lenses in a series of successive steps, by different types of manufacturing establishments at different distances from the customer." (Finding of Fact III—R. 670-1.)

The Univis Corporation has not followed a policy of exclusiveness, but a policy of opening the use of these patents to anyone qualified to work under them. For instance, as to its manufacturing licensees for making blanks,

in addition to the non-exclusive license to the Unavis Lens Company, it has licensed the Shuron Optical Company (R. 69-71) and the American Optical Company (R. 203, Government's Ex. 3.) In neither case was there any price control, but simply a non-exclusive license to manufacture the blanks and sell them as they pleased.

Fifty percent of the possible distribution licensees have been licensed by Unavis without restriction as to the licensee's sales of other competitive bifocals. These appellees are content to let the merit of the product sell it so long as competent people help make it and sell it.

#### **D. How Licensees are Selected.**

When the Unavis Corporation issues a license to any one of its licensees, it risks the reputation of the lens according to the competency of the licensee in prescribing it, designing it, grinding it, and finally fitting it to the patient as the case may be. Its likelihood of profiting from the patent is in direct proportion to the licensee's skill in satisfying the ultimate patient-customer, which means goodwill and repeat business. The only exception to the Unavis policy of an "open end license" is simply this: The licensee must be competent and, of course, a person or firm that is reliable in a financial and business way and morally responsible. These, we submit, are wholly reasonable requirements of a license irrespective of the law elsewhere stated, that the owner of a patent has a right to license anyone or decline to do so no matter how capricious his motives and reasons may be. (See pp. 59-72 this brief.) Silverman, President of Unavis, testified "it is our desire to have as many prescription licensees as possible" (R. 90) throughout the entire United States.

"Now, obviously there are certain types of retailer practitioners who have no interest in Unavis because they only handle factory culls or second quality or third quality lenses, and we do not manufacture or sell a second quality lens. I think perhaps we are the

only manufacturer in the United States that has never marketed or sold a sub-standard lens. If a man has no interest in high quality lenses, and does not maintain that type of practice, he would be no prospect for Univis by his own method of operation, and that is determined very quickly." (R. 90.)

As to determining the qualifications of a licensee, he said these licensees are investigated by personal visits, investigation of the standing and competency of them in the trade and their reputation for integrity:

"Q. Do you mean to indicate that the company will license every retailer who is desirous of receiving a license?

"A. If he conforms to our policy, yes." (R. 104.)

And further Silverman testified as to the Univis policy with respect to the patient:

"A patient knows two things when he goes into a Univis licensee for a pair of Univis lenses, and he will find out two things. First, that he has secured the best quality lens that he can buy, regardless of price. And secondly, that he will pay a price consistent with a high type of service, and that price uniform throughout the United States." (R. 105.)

As to the wholesaler's qualifications, he must have manufacturing facilities and skilled personnel. He is required to make a very substantial investment in a wide variety of lens blanks. His men must be capable of being educated to grind the Univis lenses which require more care than other lenses. There are 21 different types of multiple focal lenses made under the Univis patents. The wholesaler must be capable of reading the grinding charts and grinding instructions and also be able to use the special tools supplied by the Univis organization. To insure this, the supervision of manufacturing by the wholesaler is carried right into his plant, as the witness Silverman said:

7 "A. In the first place, the Univis Lens blanks are computed on a series of what are known as corrected



curves; that is, a series of curves for each individual prescription, so that you get the widest angle of vision and the best result from the prescription; that is, the consumer or wearer gets it. Now, those curves have all been computed by our technical department, and there is a chart, and that chart shows the curve to be ground on every prescription. We furnish tools to the distributor, special tools that are made to a special series of curves, both grinding and polishing tools for the segment surfaces of Univis, and then, of course, we have printed grinding instructions covering the grinding for cases of vertical imbalance and prismatic effects. If you want me to go into that, I will be glad to, but it is rather complicated." (R. 77-78.)

The prescription licensee, who is usually an optometrist, must have the professional and technical qualifications for prescribing and designing the lenses to fit them to the patient. This must be accompanied by good moral character, financial ability to discharge his obligations and the usual commercial integrity because he has both professional and commercial activities. (R. 90-91.)

The retail finishing licensee is the one who combines the functions of the distributor and the prescription licensee in one establishment. He is usually known as an optician. Ordinarily prescriptions by eye physicians are sent to the optician who does the designing, grinding and fitting.

Licensees are investigated by the field representatives of the licensor and after once being selected are carefully supervised to see if they maintain the standards of quality and use the technical services of tools, lens calculations and other data provided for them. (R. 91, 92.) The licensor always must recognize that unless the licensee is successful he would neither have the money to carry out his quality operations nor will he be encouraged to make the requisite investment in personnel and machinery as well as in professional training. He, therefore, investigates whether the public is being adequately served in a community by exist-

ing licensees. (R. 76, 77.) The number of licensees must not be out of proportion to the total number of patients because otherwise the licensee would not make sufficient to justify his investment if he divided the field too extensively. As the demand for Univis lenses is increased the total number of licensees is increased. It is now approximately fifty per cent of the total number of possible licensees and this number has steadily increased.<sup>1</sup>

The District Court said:

"The Lens Company employs service men to educate the lens grinders employed by the licensees, for these Univis lens blanks are computed on a series of corrective curves, i.e. a series of curves for each individual prescription to the end that the widest angle of vision may be obtained by the consumer. Such curves have been the subject of computation by the technical department of the Lens Company, are charted, and the chart discloses the curve to be ground on every prescription. In addition special tools are furnished to the wholesaler or finishing retailer." (R. 658.)

Unless the complete manufacturing operations are thus controlled and supervised and licensees selected accordingly, the patents are valueless and can never be enjoyed because this is the only way that their subject matter can be used and the only way in which the public can get the benefit of these inventions. The licensee selection is made accordingly.

#### **E. Price Cutting Restriction.**

The term "price cutter" has been given a special meaning in this trade. It is a term that defines what is

<sup>1</sup> Beginning in 1931 it had 1,597 retail licensees; in 1932, 3,066; in 1933, 3,673; in 1934, 4,163; in 1935, 4,528; in 1936, 5,218; in 1938, 5,629; in 1939, 5,850; in 1940, 6,635; and through February 17, in 1941, 6,488. On January 1, 1940 the number of wholesale distributor licensees was 329 and this number was increased to 331 through February 17 of 1941.

more familiarly known as the "bait" advertiser, who is a man who advertises low prices and when the customer responds by entering his place of business, his high pressure salesman sell the customer low grade merchandise at exorbitant prices. The low price offered in the advertising is merely a "bait" to get the victim into the establishment. On this the witness, Silverman, testified as follows:

"I think the term 'price-cutters' we all know. We all know what price cutters are, but **the term 'price cutter' in the optical business is very often a misnomer.** I prefer to call him a price raiser rather than a price cutter, because that includes that group that advertise low priced glasses, and the experience that we have and the information that we have indicates that in most instances they advertise a low price, and handle a poor quality of merchandise and charge higher prices than the most legitimate and highly ethical establishment in the city for similar merchandise. In many instances they charge much higher prices for inferior types of merchandise, so I prefer to state a price cutter is not always one who takes a piece of product and cuts it; but rather one who gets a much higher price but uses bait advertising to get people into his establishment; and people like that are not eligible because primarily they would not have interest in Univis other than to duplicate an occasional broken lens that might pass their way.

"The Court: In other words, you do not restrict the term to the narrow meaning of one who takes a trademarked article, which uniformly sells at a given price, and slashes that price?

"The Witness: No, sir. I would not restrict it entirely to that, your Honor." (R. 95.)

The company is not averse to advertising and is naturally interested in legitimate advertising (R. 101), but it is opposed to one who advertises prices as a sole inducement in order to get the unwary into his place of business.

"That refers to the bait advertising practitioner, of which there are quite a number, unfortunately, throughout the United States.

"Q. And the third question is that his prices are lower than average competition?

"A. Yes. That is the procedure of the bait advertiser. He always advertises something for less and then when he gets them interested he charges them any price that the tariff will stand." (R. 102.)

It is the policy of the Univis Corporation not to license such bait advertisers, colloquially known as "price cutters." It is found that their methods of business would ruin the goodwill in these lenses because the public would not get fair prices and the highest grade lenses, competently manufactured to fill the patient's needs. The Univis organization, through this system of making and prescribing and fitting lenses, is the only one making and selling only first quality lenses and will not sell any other quality knowingly. (R. 90.) It has, therefore, had the reasonable requirement that its licensees must also perform on a first quality basis in order to accomplish this desirable objective both for the appellees and the public and the full enjoyment of the patented inventions.

#### **F. Free and Open Competition in Bifocal Lenses: No Restraint.**

Appellees are not charged with conspiracy with any competitive blank manufacturers. There is no conspiracy charge in the bill with the licensees. The lower Court so found. (R. 679, Finding VIII, IX, X.) There is free and open competition in bifocal eyeglass lenses. Such competitive lenses as Kryptok, Wide-Sight, Panoptik, Ful-Vue, Titmus and others, are available in far larger quantities than those of Univis, so that the patient has a wide variety of bifocal eyeglass lenses to choose from with a wide range of prices depending upon their comparative advantages. The competition in goods of this type is free and

open and extremely vigorous. (R. 100, 170, 198, 199.) The licensees of Unavis handle large quantities of these other bifocal eyeglass lenses; there is no restriction by Unavis on the licensees as to what other competitive lenses they may or may not handle. (R. 677, Finding XIII.)

The licenses of the Unavis Corporation with their restrictions as to minimum prices and qualified licensees merely seek the attainment of full reward to the owner of the patents in question as compensation for the patented thing, to wit, the eyeglass lenses. The Government admits that "The controlling fact is that the entire license structure is built upon a single contribution to science and the useful arts—specifically the claimed invention of an allegedly unique type of lens blank or lens for spectacles" (p. 32, Government brief). Then the Government also admits "To be sure, these restrictions make the purchase of Unavis lens blanks more attractive by limiting the number of persons who may handle Unavis lenses and fixing a minimum price for such lenses." (p. 43.) This, it is admitted, "embraces the reward for appellees' invention." (p. 43.) Therefore, the licenses, merely making the sale of the patented thing "more attractive" in order to sell more lenses and including a reward to the patent owner for his invention, cannot be regarded as unlawfully destroying competition.

This peculiar and unique nature of eyeglass manufacture is a practical matter, manufacturing being carried out by *stages* and in *local communities*, where each of the wearers of these eyeglasses reside. It is not practical to manufacture eyeglass lenses at a central factory because each lens must be adapted to a particular wearer and made *after the requirements of the individual wearer*, both as to prescription, design and construction of the lens, carefully determined by experts who must work directly with and repeatedly test, examine, as well as observe, the wearer.



The enjoyment of the Univis patent rights necessitates such a method of manufacturing and distribution of the manufactured products. The requirements of the public interest likewise necessitate it. It should be thus clearly understood that the peculiar method of doing business, which practical requirements of this industry have placed upon these defendants, is not of Appellees' making. They have simply adjusted their enjoyment of their patent monopoly over eyeglass lenses to the requirements that are made necessary by physical conditions of the wearer, and the requirements of proper manufacturing of lenses to satisfy the wearer's requirements. *Any other course would be markedly against the public interest because of inconvenience, delay and injury resulting from defective lenses.*

The product of the wholesaler cannot just be handed to the patient without anything more on the part of the optician or optometrist. As a matter of practical common sense, it will be seen that this somewhat complicated stage manufacture is inevitable. It is for that reason that the patents specify, in each of the claims, "lenses." This is because "lenses," as defined in Paragraph 6 of the Bill of Complaint, mean something "manufactured of glass to give normal vision to the user thereof" and that is the **final product which is sold only once**, and that, at the time of being so completed when it fits the user for whom it has been specifically prescribed and designed.

#### **V. PATENTS OF THE UNIVIS CORPORATION.**

This brings us to the fundamental factual inquiry in this case: what do the patents cover?

Appellees' position, sustained by the Court below, is that the patents cover a "lens" and the necessary manufacturing licenses leading up to the final completion of that lens by stage manufacturing are valid. Paragraph 6 of the bill defines a lens as follows:

"The term 'lens' wherever used in this complaint, means a lens manufactured of glass to give normal

vision to the user thereof, as in all types of spectacles and eyeglasses, etc.”

This definition was adopted by the Court. (R. 672, 673.)

Paragraph 9 of the bill said:

“The term ‘Univis bifocal’ or ‘Univis lens,’ wherever used in the complaint, refers to a type of bifocal lens incorporating features claimed by certain patents controlled by defendant, Univis Corporation, etc.”

On the other hand, the blank which is made by The Univis Lens Company and sold as a blank while containing parts of the claims in the rough, is not a usable product through which you can see. This rough piece of glass must be designed and ground to a prescription and design into a lens before it can be of any use. The Court so found. (R. 673.)

Patent No. 1,632,208<sup>1</sup> covers a Type B lens. (See sample case Exhibit K.) The specification says:

“This invention relates to lenses particularly those which are used with spectacles and the like.”

Typical Claim 2 reads as follows:

“2. In a fused bifocal lens, a countersink of one refractive power and a fused zonal<sup>2</sup> insert of a different refractive power.”

Stanley patent No. 1,845,940 covers the R type of lens.<sup>3</sup> (Exhibit K.) The title of the patent is “Lens” and the patentee says “My invention relates to eyeglasses.” Claim 1 is a typical claim reading as follows:

“1. In a lens, a major lens and an insert of higher index glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top and a flat bottom of different lengths, the vertical

<sup>1</sup> This patent was sustained in *United Kingdom Optical Co. v. Benedict, Opinion*, Nevin, J., D. C. U. S. Southern Ohio, R. 558.

<sup>2</sup> A zonal insert is a section of a sphere having round ends and a flat top and bottom.

dimension of said insert being greater than the radius of the circle but less than the diameter of the circle."

Here again the lens is the final product which is claimed.

Stanley patent No. 1,899,777<sup>1</sup> covers the Type D bifocal eyeglass lens (Exhibit K). The patentee says "My invention relates to bifocal lenses" and the "resulting lens of my invention has the very substantial advantage of wide lateral, long distance, vision, etc." Each of the claims is limited to a lens or bifocal lens or a multifocal lens. Typical Claim 1 reads as follows:

"1. In a **lens**, a major lens and an insert of different glass from the major lens, said insert consisting of a circular member less than a full circle with a flat top, the vertical dimension thereof being greater than the radius of the circle but less than the diameter of the circle."

Silverman patent No. 1,879,769 is for the purpose of producing a lens. It deals primarily with the grinding procedure followed by the Univis wholesale and finishing retailer licensees in correcting for prismatic imbalance.<sup>2</sup> The Hancock patent No. 1,876,497 is entitled "Lens," the patentee saying:

"This invention relates to improvements in lenses and has particular relation to an improved construction of lens of the trifocal type \* \* \* A further object of the invention is the provision for a trifocal lens, etc."

Claim 1 is typical of the lens claims of this patent.

<sup>1</sup> Patent sustained by Otis, J., U. S. D. C. Mo. Western Division, *Univis and United Kingdom Optical Co. v. Morgan*, R. 64, 65; patent invalidated *Univis v. Rips*, 104 F. (2d) 749 (6th C. C. A.); certiorari denied, 308 U. S. 592.

<sup>2</sup> Prismatic imbalance is that condition where the right and left eye view an object in different planes whereas they should normally look at the object in the same plane. This condition, unless corrected, results in distortion of the image.

The Univis Corporation also owns and licenses the blank manufacturer, Univis Lens Company, under its patents for the manufacture of blanks such as patents Nos. 1,729,654, 1,822,606 and 1,868,863. These patents are devoted exclusively to blanks in contrast to the preceding patents which deal with the making of lenses. (Defendants' Exhibit F, R. 499, 504, 510.)

The District Court's finding on this subject reads as follows:

"The remaining patents set up by the defendants in their answer are owned or controlled by The Univis Corporation and are also, for the purpose of these proceedings, valid in law. With the exception of one covering a polishing machine and two for telescopic bifocal lenses, that are in no way related to the subject matter of this case, but cover and relate to the process or method for manufacturing lens blanks." (R. 678.)

The Government now seeks to avoid the finding of fact and conclusion of law of the District Court that the patents covered lenses and the licenses were good until the first lens was sold; its position in the District Court was that the lens patents only covered blanks. The Government now tries to shift its ground to avoid the embarrassment of the plain meaning of the patents covering lenses to say that the monopoly is exhausted because the licensor receives some royalty for licensing the making of blanks. This ignores the fact that the additional compensation to the licensee came from the work of the subsequent licensees which insured the successful completion of the patented lenses with consequent repeat orders.

This position of the Government, if sustained, would also greatly expand the doctrine of contributory infringement in situations such as this where the blank is not an article of commerce but only made specially for the purpose of making the ultimate lens. Such a proposal would open the door to full recovery against contributory infringers contrary to long established doctrine. See *Walker on Patents* (Deller Ed. Vol. 3, Sec. 508); *Individual Drink-*

*ing Cup Co. v. Errett*, 297 F. 733 (C. C. A. 2); *Duplex Envelope Co. v. Denominational Envelope Co.*, 80 F. (2d) 179 (C. C. A. 4); *Lilly v. Laucks, Inc.*, 68 F. (2d) 175 (C. C. A. 9).

If we treat the blanks as unpatented articles of commerce not subject to the rule of contributory infringement, then the Government's position is directly contra to the rule that a patentee may not control unpatented elements which may be later incorporated into a patented combination. See *Carbice Corp. v. American Patents Development Corp.*, 283 U. S. 27; *Leitch Mfg. Co. v. The Barber Co.*, 302 U. S. 458, etc.

Univis lenses are more difficult to make than other lenses when it comes to grinding the blanks, designing them and fitting because of the flat tops of the inserts. Extreme accuracy and great skill are necessary to precisely grind the lenses so as to bring these flat tops into precise horizontal position. A slip of a fraction of a millimeter will ruin the lens entirely because the tilting of the flat top will result in prismatic jump, that is, the prism resulting will cause the object viewed to be displaced. A Government witness said:

"Well, the first and principal difficulty in that is that in grinding your cylinder for your astigmatic correction that is always apt to, that is the operator in working with it is apt to shift that, well, I might say a 64th of an inch in grinding and when we go to cutting that up the main essential part of a lens is, of course, to see that the axis is correct, and so if you get your axis correct, if that has not been ground precisely in relation to the flat top, your top will slant when you cut it off. For instance, if it is supposed to be 180, and it comes out 178, we must have it 180, and if we shift that down so the top of the segment will not be straight that makes an unsightly looking job and it gets into the patient's line of vision and the result is we have to be extremely careful to see that our tools are in absolute condition and the machines in perfect shape so those things will not happen." (R. 182-3.)



It is for this reason that the Univis Lens Company has had to use particular care in connection with the manufacturing instructions and requirements on the part of its licensees. The difficulty in grinding, etc., has presented such problems that the Univis Corporation and the Univis Lens Company have found it necessary to have special instructions by the representatives of the licensees, necessary to furnish special tools to the licensees; and necessary to furnish instruction charts in order to guide the licensees as to the curvatures to be ground. (R. 183, 77, 78.)

**A. The Validity Of The Patents Of Appellees Is Not Challenged: The Ownership Of Trademark "Univis" Is Not Challenged.**

Government counsel conceded at the trial that "the Government is not attacking in any way whatsoever the validity of any of the patents." (R. 177 F. II, R. 670.) Likewise the title of the patents and the title to the trademarks "Univis" and "Universal Visibility" were conceded by the Government to the Appellees. (R. 676, F. X.)

The scope of the patents in question is inferentially sought to be limited in the Brief of the Government now by claiming that they are merely "improvement patents." But even if this is true it is not disputed that a patentee is entitled to the full reward for his patented invention whether it is an "improvement patent" or a basic one. This Court is fully cognizant of the fact that it is ~~an~~ frequently only through an improvement patent that an original idea is made commercially practicable or marketable.

**VI. THE UNIVIS LICENSE CONTRACTS.**

The Univis license policy is carried out first by a license direct from The Univis Corporation to The Univis Lens Company, Inc., under the terms of which The Univis Corporation conducts the sales promotion work for the promotion of the sales of the completed lenses and to estab-

lish an approved list of purchasers, and, in turn, The Univis Lens Company, Inc., has the right to manufacture the lenses, but to sell them only to those customers approved by The Univis Corporation and to no others. (See Pltf's Ex. 3, R. 203.) **It is, therefore, not a full unlimited license to manufacture, use and sell.** Second, The Univis Corporation grants further limited licenses to "wholesale distributor licensees" (Pltf's Ex. 4, R. 207) and "retail finishing licensees" (Pltf's Ex. 6, R. 211) and finally "prescription and fitting licensees." (Pltf's Ex. 9, R. 214.) It is these three classes of licensees made necessary by the established agencies in this trade who constitute the approved list to whom the blanks or lenses may be sold by the respective licensees with, of course, the understanding that the finally completed lenses may be sold by the licensees to any customer desiring the same at the minimum price stipulated.

The Univis Corporation has licensed three manufacturers of lens blanks: The Univis Lens Company (Exhibit 2, R. 200); The American Optical Company (Exhibit 3, R. 203); Shuron Optical Company (Exhibit 1, R. 73). This latest contract of Shuron is now in litigation.<sup>1</sup>

The blank making contract of Univis Lens requires the payment of a royalty of fifty cents and the sale of blanks to the Licensees of The Univis Corporation. We do not understand that there is any particular attack made upon this contract and no detailed discussion of its provisions is necessary. The Univis Corporation licenses three other classes of licensees: the wholesaler-grinder designated as a distributor; a finishing licensee who is a grinder; and the prescription licensee who may or may not do limited grinding and who like the finishing licensee may or may not prescribe, design and fits the lenses. The retail

<sup>1</sup> *Univis Corporation and United Kingdom Optical Company v. Shuron Optical Company*, Civil Action No. 909, United States District Court Southern District of Ohio Western Division.

finishing licensee or the prescription licensee makes the first and only sale of a completed lens under the patents to the public and thereby places the lenses in the channels of commerce and outside of any further control of the patents.

#### **A. The Distributor License Agreement.**

This is a "non-exclusive, non-assignable, revocable right to complete the manufacture of Univis bifocal lenses from rough lens blanks." It authorizes the transfer of a restricted interest in the lenses to the prescription licensee who orders such lenses from the distributor wholly or partially ground according to the prescription and design instructions that he transmits after his examination of the patient. The contract says that the distributor is authorized to sell "Univis bifocal lenses made from said blanks only in accordance with the terms and conditions set forth herein." Such conditions are the sale to designated licensees at a stipulated price and the sale shall "only be sold under the name Univis." The distributor "agrees to employ good material and workmanship in completing the manufacture of Univis bifocal lenses and conduct the business honorably and skillfully so as to endeavor to make and maintain the reputation for the lenses." The patents under which the license is granted are, of course, listed. It is stated that the purpose of the contract is for "maintaining said quality in the finish and final delivery of the Univis bifocal lenses which are the subject matter hereof to the ultimate purchaser and wearer." There must be a very close working partnership between the distributor-grinder and the prescription licensee because together they must do what the retail finishing licensee does in one establishment, that is, prescribe or handle a prescription, design by adapting the prescription to the wearer and grind, thereafter inspecting, checking, adjusting and fitting to the wearer. These two agencies, the distributor and the prescription licensee, acting as a unit, or the equivalent retail

finishing licensee, bridge the gap between the needs of the patient and the rough blank to produce the first sale of the completed lens for the first commercial purchaser, the patient.

The wholesale licensee is a restricted licensee only licensed to pass a limited title to ground blanks to the optician or optometrist who is to complete the passage of title by final first sale of the completely finished lens to the ultimate patient. It will be understood that the **only thing** that the optician or optometrist (prescription licensee) is selling is this single pair of *finished eyeglass lenses*. After he performs the various steps of designing, he either makes these lenses by grinding the blanks or so-called "finishing" of them, or has them ground or finished by some other grinder for his account. Whether he does the grinding himself or has someone else do so, wholly or partly, makes no difference in the finished lens. **The only sale that takes place of the finished lens is this single sale by the optician to the patient.** This is the first and final release of the completed article into the channels of commerce. (R. 190, 661.) The wholesaler, who is only a grinder, does not sell lenses to the patient. He is not licensed to do so. He only manufactures, partly, the lenses for the prescription licensee's account. The prescription licensee may or may not mount them, but always must again adjust and fit the completed lenses to the wearer to see that both the optical conditions of the prescription and his design specifications check, so that the lenses do actually satisfy the wearer. The Government makes some point that all that is done is to take a pair of tweezers and adjust the frames. If this is necessary, it is, of course, a part of the manufacturing operation, but is only a very small part. The ultimate fact is the designing as well as the final fitting must be properly carried out, all of which is a fundamental part of the manufacturing, which is the only thing that is important. (R. 85, 88, 90, 106.) Under such circumstances,

there is only the one sale of the completed eyeglass lenses that is made by the finishing licensee or prescription licensee. (R. 190.)

This finished eyeglass lens, as hereinafter pointed out, is the final article of manufacture **called for by each claim of each patent.** *It is not until this finished eyeglass lens is completed that the article of the patent is also completed and it is not until this completed article is sold that the patent monopoly is exhausted.* This is necessary because of this stage manufacturing.

### **B. The Prescription Licensee Agreement.**

Now turning to the other half of this restricted license of the distributor licensee the following are the provisions of the prescription licensee who receives the lenses made for his account by the distributor, wholly or partly. The prescription licensee is licensed "to use and/or prescribe and fit genuine 'Univis' lenses" at a stipulated price and he is further restricted that he "will only prescribe and fit 'Univis' as finished lenses to wearer on the prescription of refractionists, his own refractions and neutralizations, and that no lenses will be prescribed and fit except to the above mentioned patients with whom the representative exclusively and directly transacts his business." The reason for this latter provision is to insure the function of the prescription licensee of prescription and design directly with the person who is to wear the lenses because the grinding by the distributor for the prescription and design of the prescription licensee as the result of the prescription licensee's work before grinding and the prescription licensee's work after he receives the ground lenses in completing the work with the patient is a single transaction, every step of which must be conducted for the benefit of a single patient. It is not until that patient is satisfied that this single transaction is completed and the first sale of a completed lens is made by the distributor-prescription licensee team.



### C. The Finishing Licensee Agreement.

All that we have stated as to this teamwork is performed under the finishing licensee agreement by a finishing licensee who combines in one establishment technical skill and grinding and manufacturing facilities and the facilities for writing prescriptions or designing or both. Under the finishing license the licensee is licensed for the purpose of "completing the manufacture thereof according to suitable prescriptions for the use of the purchaser who will wear the resulting bifocal eyeglass lenses." This limited license enables the licensee "to complete the manufacture of Univis bifocal lenses from rough lens blanks purchased only from the authorized manufacturing licensees" under patents at stipulated prices. The finishing licensee is restricted to selling only finished lenses "to the wearer on a prescription of refractionists, his own refractions and neutralizations, and that no lenses will be sold except to the above-mentioned patients with whom the 'Finishing Licensee' exclusively and directly transacts his business." This is the same provision as in the prescription license. The finishing licensee is limited, as the distributor is limited, to employing good material and workmanship and conduct the business honorably and skillfully so as to "endeavor to make and maintain the reputation of the lenses."

Each of these contracts is a restricted license carefully designed to enable the licensee and the licensor to enjoy the benefits of the patents and insure that the patient gets direct personal treatment and exactly the best lenses that can be given. These reasonable restrictions as to maintaining quality of manufacture, prescription and design, the marking of the lenses at each stage with the trademark, "Univis" to identify them, and the restricting of the purchase of blanks and the grinding of blanks to authorized sources and the restriction of the prescription or finishing licensee to selling lenses only to patients with whom he directly deals and on whom he has exerted his

technical skill in prescribing and designing are directed to the purpose of insuring a continuing expanding business by rendering a genuine public service. Please keep in mind that at each stage of the licenses the control of the blank or lens in different stages of completion in the necessary stage of manufacturing operations is retained and the rights to the subject matter are limited under the licenses as restricted licenses because otherwise it would release the subject matter without control with resulting disaster to the quality. Every step of these licenses, if a patient could come into a factory, could be completed in one place, but because of the peculiar nature of the subject matter the quantity manufacture of blanks to keep down the cost is performed at a central factory and the custom work of fitting the individual must be done in the individual's own community conveniently close to him.

#### VII. FAIR TRADE CONTRACTS.

The Univis Lens Company, as the manufacturer and owner of the trademark "Unvis," adopted Fair Trade Contracts to protect its good will. The action of 40 State Legislatures provided remedies and advantages under Fair Trade Contracts additional to anything available to it under the patent laws. Its reason is best stated in the language of Mr. Justice Sutherland in *Old Dearborn Distributing v. Seagram-Distillers*, 299 U. S. 183, that:

"The primary aim of the law is to protect the property—namely, the good will—of the producer, which he still owns. The price restriction is adopted as an appropriate means to that perfectly legitimate end, and not as an end in itself." (p. 193.)

Congress has approved the economic wisdom of such acts by exempting the operation of the Sherman-Anti-Trust Laws through the Miller-Tydings Act Amendment.

There is no charge that Univis has conspired with competitors to fix resale prices and the Court has so found. Likewise, there is no charge of any horizontal fixing of re-

sale prices but only the vertical prices permitted by law. This vital fact should be kept in mind, as the principal charge of the Government is that these Fair Trade Contracts are invalid because they are part of an unlawful conspiracy, but the District Court found no conspiracy. (R. 677, Finding XIII.) It only found that one license contract went beyond the patents in its control. (R. 679, Finding XII.)

The provisions of the Fair Trade Contracts are for the purpose of protecting the good will. In addition to the price provision approved by this Court, there is requirement for marking the lenses with the trademark "Univis" (Sec. II); a provision for grinding the lenses to the specifications and instructions of Univis to preserve the quality (Sec. IV); a provision for technical services and instructions by the manufacturer to aid the wholesaler in his manufacturing operations, and Section V deals with the details of the price; and the remainder of the provisions have to do with the termination of the contract. The finishing retailer contract and the prescription retailer contract are substantially the same.

The Univis Lens Company is the owner of the trademark "Univis." (R. 676, Finding X.) There have been offered in evidence two certificates of trademark registration to the lens company. "The first trademark No. 235,817, covers the 'Univis' and recites that the mark has been continuously used for ophthalmic lenses and applied to said goods in applicant's business since January 20, 1927 \* \* \* the Government has not challenged the ownership of the trademark "Univis." (Finding X, R. 676.) The District Court further found that the retailer "does sell such finished lenses made from blanks of the producers, and he does sell such finished lenses under the trademark 'Univis' owned by the Univis Lens Company, the producer of the blanks."

The blank is sold by the Univis Lens Company in a carton marked with the trademark "Univis." (R. 196,

Deft's Ex. G.) The trademarks themselves Nos. 235,817 and 250,138, are contained in Exhibit F. (R. 196.) A certificate of guarantee from the Univis Lens Company is also delivered with the lenses when sold to the customer. This contains the name and guarantee of the Univis Lens Company, or the prescription licensee, when the sale is made of the completed lenses to the patient.

The trademark "Univis" so owned by the Univis Lens Company is applied to its products to indicate origin at various stages of the conversion of the blank into its only useful end product, the lens. The Fair Trade Contracts are between the Univis Lens Company, as the manufacturer of the physical thing, known as the blank, which ultimately becomes the finished lens and those who help make and sell it in final lens form in the ordinary channels of distribution. The three Fair Trade Contracts with the wholesaler (Ex. 10, R. 217), finishing retailer (Ex. 12, R. 224), and prescription retailer (Ex. 13, R. 228), are in behalf of the Univis Lens Company, the owner of the trademark "Univis" on lenses, as these contracting parties agreed to do the manufacturing under this trademark. The trademark is applied to both the blank by placing the blank in a small individual paper carton carrying the trademark "Univis," and the lens itself, when ground, is identified by the trademark "Univis" in connection with the guarantee as it is delivered by the prescription licensee or finishing licensee to the patient. As finally delivered, the lenses are mounted in a frame and cannot, of course, be placed in a carton as in the case of a blank carrying the trademark "Univis." The lower Court has found that the sale is made by the retailer licensee under the trademark "Univis." (R. 675, 676.)

There is no other practical way with merchandise of this character of associating the trademark with the same article both in its unfinished form and its finished form; and by this only practicable procedure, the objective of the

Miller-Tydings Act, of trademark identification, is admittedly carried out.

### **VIII. THE TITMUS ISOLATED INCIDENT.**

We leave a brief statement of the facts, to avoid repetition as to this isolated incident, for the argument. The Court in its opinion disposed of the matter thus:

"There is an isolated instance wherein \* \* \* the defendants departed from the protection of their patents \* \* \* it may be doubted whether the proof is of sufficient weight to justify the conclusion that in and of itself it amounts to a violation of the Anti-Trust Acts. It must also be observed that there is no proof that the defendants exercised among themselves or by combination with others, a control of all bifocal eyeglass lenses." (R. 667-668.)

### **IX. SUMMARY OF THE ARGUMENT.**

- I. The patents of the Univis Corporation cover the completed lens. Its license system exercises no control after the lens is sold.
- II. The wholesaler-grinder under his license only conveys a restricted property to a prescription licensee for a given patient. There is only one transaction and one sale.
- III. Restrictive clauses in patent license agreements are legal, such as, who are to be licensed, the price, and similar matters.
- IV. The activities of the Univis licensees, if not licensed, would be an infringement of the lens patents, and are, therefore, controllable under license.
- V. There has been no illegal restraint of trade in fact within or without the license system.
- VI. The Titmus incident was an isolated one and amounted to no more than the exercise of the legal right of a patentee and his licensees to stop infringement of patents.
- VII. The fair trade contracts are legal because they protect the good will of the trademark "Univis" and



enable the manufacturer of the blank which owns the trademark that is applied both to the blanks and lenses in practice to control the conditions of sale of the trademarked article.

VIII. None of the appellees was subject to the jurisdiction of the District Court because not found within that district or doing business therein.

## X. ARGUMENT.

### I. The Patents of the Univis Corporation Cover the Completed Lens. The License System Exercises No Control After the Completed Lens is First Sold.

Univis licenses do not extend the control under the patents beyond what a patentee would normally do in his own factory in the making and selling at a stipulated price of a completed lens. Necessity forces this branch manufacturing in many communities; and Univis, instead of resorting to wholly owned distributors and retailers, has elected to promote free competition by sharing its patents with its licensee agents everywhere in an open end license policy and thus selling direct to the consumer.<sup>1</sup> You will find that these licenses do no more than that which is customary for any manufacturer to do in making a patented article in his own plant and selling it at his own price. The license system gives the patent benefits in various fields of endeavor. *General Pictures Co. v. Western Electric Co.*, 305 U. S. 124, 127.

Appellees' licenses do not control competitors: they merely enlarge the field of competition and increase that competition by opening the patents to the widest use.

Appellees' patent monopoly is not exhausted until the first sale of the completed lens to the patient by the finishing

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<sup>1</sup> "The owner of an article, patented or otherwise, is not violating the common law, or the Anti-Trust law, by seeking to dispose of his article directly to the consumer and fixing the price by which his agents transfer the title from him directly to such consumer." *U. S. v. General Electric*, 272 U. S. 476, 488.

or prescription licensee. The Government admits on Page 42 of its brief that under the Univis license system **"the licensees perform the final operation necessary to make the patented product available to the public."** Until that occurs the patentee has a right to establish those necessary restrictions to ensure the quality of the product and the resulting profit due to repeat sales by satisfying the public as he would do in his own manufacturing plant. *Mitchell v. Hawley*, 83 U. S. 548-550; *Bement v. National Harrow*, 186 U. S. 70; *Paper Bag Patent Case*, 210 U. S. 405-429; *United States v. United Shoe*, 247 U. S. 32-57; *United States v. General Electric*, 272 U. S. 476; *Standard Oil v. United States*, 283 U. S. 163-179; *General Talking Pictures v. Western Electric*, 305 U. S. 124; *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436-456.

When does this first sale of the completed lens take place?<sup>1</sup> These patents call for lenses and when the lens is sold as defined by the patent and its claims, the monopoly is exhausted. In *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436, 456:

"The extent of that right is limited by the definition of his invention, as its boundaries are marked by the specifications and claims of the patent. *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502, 510."

The District Court upheld the manufacturing of the blank under license and the manufacture of the completed lens from the blank by the finishing licensee, who combines in one establishment, the designing of the lens, either from his own prescription or that of another, the grinding of

<sup>1</sup> For the purpose of this argument, we may consider there is only a single lens patent because only one patent of the appellees covers each type of lens. Type B lens is covered by Watson-Culver patent No. 1,632,208 (R. 497-8); Type D lens is covered by Stanley patent No. 1,899,777 (R. 525-8); Trifocal lens is covered by Reissue Patent to Hancock No. 19,142 (R. 555-7); Type R lens is covered by Stanley patent No. 1,845,940. (R. 507-9.)

the lens and the final fitting of the lens to the patient. At that point the District Court found the first and only sale of the completed lens to the public, in satisfaction of the patent on lenses, was effected. In the case of the prescription licensee, the work is done in two places: the optometrist, who is a prescription licensee, examines the patient, writes a prescription and works out the design of the lens; he then sends the prescription and design instructions to the wholesaler-grinder, who grinds the lenses wholly or in part for this particular patient, as a part of a single transaction, and then returns these lenses, whereupon the optometrist proceeds to complete the lenses by finishing them and adjusting and fitting them to the patient (and sometimes does some grinding on them), whereupon the first sale is made to the patient. The District Court, overlooking the unity of the transaction, believed the first sale, in this instance, took place when the glasses were transferred on a restricted basis by the wholesaler-grinder to the prescription licensee before delivery to the patient. In practical effect, it is all one transaction, whether conducted in one shop by the finishing licensee or in two shops by the combination of the wholesaler-grinder and the prescription licensee. In both cases the first sale of the completed lens is made only to the patient. The licenses show that the transfer of title is on a restrictive basis until the lens is so complete that it can be sold to a particular patient. (See Section 2—Distributor's License—R. 207, Ex. 4.) There can be no sale by the wholesaler-grinder direct to a patient because his authority, under the license, is limited to merely transferring a lens that is not yet satisfactorily determined to be what the patient needed. The wholesaler could only convey the physical property with limitations on its use. There is no right in law for an outright sale by the wholesaler under his restrictive license. *Mitchell v. Hawley*, 83 U. S. 544, 550; *United States v. General Electric*, 272 U. S. 476; *General Pictures Co. v. Western Electric*, 305 U. S. 124.

Likewise there is a restrictive license to the finishing and prescription licensees who are similarly limited, the essence of whose contract is that he will only sell the Univis lenses as finished lenses "to the wearer on a prescription of a refractionist, his own refractions and neutralizations, and that no lenses will be sold except to the above mentioned patients with whom the 'finishing licensee' exclusively directs and transacts his business." The cardinal distinction between the licenses in the case at bar and that in *Adams v. Burke*, 17 Wall. 453, cited by the Government, is that in the *Adams v. Burke* case there was an unrestricted and outright sale in a particular territory. That case, therefore, has no applicability here.

The Government claims that when the blank is made, the lens patents are satisfied. A blank is not a lens because it cannot be used for optical purposes, and it has no commercial value except for the purpose of later, with additional manufacturing, being brought into lens form. The District Court so found. (R. 672, 673; Finding VI.) The Government's Bill (paragraphs 3 and 9) defines the lens as the usable article for vision purposes, saying that the Univis lens refers to a type of bifocal lens "incorporating features claimed by certain patents controlled by defendant Univis Corporation." (R. 5.) The patents on lenses, in their title, in the description and in the claims, are limited to lenses. The making of the blank is only one of the operations leading up to the completion of the patented product known as the lens. The District Court so found. (R. 672, 673; Finding VI.) The Government, now, realizing the weakness of its position, which is flatly contrary to the plain wording of the patents, in parts of its brief abandons this position, saying that while all manufacturing operations under the lens patents have not been completed by the making of the blank, and the patents do call for lenses, yet, where a patentee secures a royalty on the blank, that his monopoly is exhausted. This completely ignores the practical consideration that the royalty is only

one element in the compensation of the patentee. How much royalty the patentee receives is determined primarily by the customer good will and satisfaction with the patented lenses. In order to ensure that the royalty will flow from repeated sales to satisfied purchasers of the patented lenses, it is necessary for the patentee to control the subsequent making of the blanks into lenses which his patent calls for. If this is not done, the mere fixing of a royalty on a blank would be meaningless, and no profit of consequence would flow from the patented lenses because the royalty rate must be multiplied by sales of lenses resulting almost wholly from the **quality and skill of the work** of the finishing and prescription licensees.

Until the lenses are completed and sold to the first customer, they are not discharged from the monopoly of the lens patents. Until then, the issue of the Anti-Trust Laws does not arise. "The Anti-Trust Laws did not embrace or include contracts entered into in the legitimate exercise of rights conferred under the patent laws." *Walker on Patents*, Deller Edition, Sec. 399, Vol. II, page 1545. *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436-456. On page 29 of the Government brief it is said that the Univis system makes impossible free and open competition. This Court has frequently announced that you cannot expect free and open competition in patented products. The very nature of the patent system is against it. *Paper Bag Patent Case*, 210 U. S. 405, 429; *Bement v. National Harrow Co.*, 186 U. S. 70; *United States v. United Shoe*, 247 U. S. 32. But this is in the public interest in the present case where the patents are used to promote competition rather than hinder it. The critical question, therefore, is where the first sale of the completed lens took place.

Such a sale takes place either by the prescription licensee or by the finishing licensee. The only difference between the finishing licensee whose license the District Court held was valid, and the prescription licensee, whose license was held invalid, is that the former does all of the



grinding as well as the designing, prescribing and fitting, while the latter in some instances does no grinding, and in other instances only a part of the grinding, but performs all the rest of the manufacturing operations of designing, fitting, etc., and has the grinding done for him by some agent, such as a wholesale grinder. We submit there is no difference in substance whether the manufacturing work is done wholly by the licensee in his own establishment, or a part of it is done for him elsewhere for his account, so long as there is only one sale by him of the completed lens to the ultimate customer.

Whether the prescription licensee orders from a distributor and then sells to his patient or whether the patient goes to a finishing licensee the result is the same: **a single transaction and a single first sale of the lens.** As proof of this, is the fact that the prescription licensee does not order a group of lenses and then resell them to customers out of stock which would be a true resale.

Obviously, the sale of blanks by a Univis distributor-grinder to unauthorized persons, or the manufacture and sale of blanks by a non-licensee, would constitute contributory infringement by reason of the sale of a product which is not an article of commerce but one especially designed for ultimately being used to make the Univis lens, and for that purpose only. This would be contributory infringement under the familiar doctrine of *Leeds & Catlin v. Victor Talking Machine*, 213 U. S. 325, 332-3, where the Court said:

"A combination is a composition of elements, some of which may be old and others new, or all old or all new. It is, however, the combination that is the invention, and is as much a unit in contemplation of law as a single or non-composite instrument. Whoever uses it without permission is an infringer of it. **Whoever contributes to such use is an infringer of it.**"

This case is still good law; *Carbice v. American Patents* case, 283 U. S. 27.

A careful examination of all of the decisions in which restrictions under patent licenses have been disapproved under the Sherman Act will reveal as the fundamental basis of these decisions that a conspiracy, contract or combination was found to exist, the essence of which was the creation of a monopoly or an interference with competition, outside of the patent, under the provisions of which others were excluded from or restrained in a business *that otherwise would be open to them freely*. This is not the case with patents. This Court has long recognized that as to a patented article the law creates a specific character of monopoly which confers the right upon the patent owner to exclude any others from making, using or vending the patented thing or permitting by licenses the manufacture, use or sale of the patented thing under such terms as may be imposed upon the licensee as to his own making, using and selling within the terms of the patent. All that the Courts have condemned is an attempt by patent owners to extend the exclusive rights of the patentee granted under the patent law *beyond* the boundaries of the patent itself.

The Government relies mainly upon the case of *Ethyl Gasoline Corp. et al. v. United States*, 309 U. S. 436 (1940). A careful examination of the facts of that case and the decision of this Court based thereon clearly distinguishes it from the facts of the case at bar as being any authority sustaining the position of the Government here. To the contrary, it sustains our position. In that case, the first two patents covered the fluid. An attempt was made to use the first two patents to perpetuate the monopoly in connection with the third patent upon mixing the fuel with the gasoline and with the fourth patent for using the fuel in a combustion motor. No such practice is utilized here as only a single lens patent is involved with any one type of lens.

In the *Ethyl* case the patent owner actually manufactured and sold the completed patented fluid to the oil refiners and **granted them licenses to manufacture, sell**

and distribute the patented fluid to other refiners and to jobbers licensed by the patent owner. Unrestricted title to a complete patent article was passed. The patented fluid was complete and needed no more treatment to make it finally meet the claims of the patent. The second set of licenses was to these selected jobbers and these licenses to the jobbers placed upon the jobbers many restrictions not necessary to go into here in detail in handling and selling the patented treated gasoline which the refiners were authorized to make and sell to the jobbers. We say it is not necessary to go into these restrictions placed upon the jobbers, *because this Court found that the licenses to the refiners authorizing them to sell the patented fluid released that article from the patent monopoly and the attempt to regulate what the jobber did with this article thus released from the patent monopoly was outside of and beyond the patent monopoly.* The patent owner did not establish directly a resale price for the jobbers but this was left to the refiners to do. (309 U. S. 436, 459.)

“Such benefits as result from control over the marketing of the treated fuel by the jobbers accrue primarily to the refiners and indirectly to appellant, only in the enjoyment of its monopoly of the fluid secured *under another patent.* The licensing conditions are thus not used as a means of stimulating the commercial development and financial returns *of the patented invention which is licensed,* but for the commercial development of the business of the refiners and the exploitation of a second patent monopoly not embraced in the first.” (p. 459.)

There was no attack in the *Ethyl Gasoline* case upon the licenses to the refiners as such, the gravamen of the complaint in that case being that the licenses to the refiners *released* the patented article from the patent monopoly when those licensed refiners under their license made and sold the complete patented fluid that satisfied the patent; and, therefore, the licenses to the jobbers with their

restrictions pertain to a resale of the completed patented fluid, after it had been released from the patent monopoly.

"The extent of that right is limited by the definition of his invention, as its boundaries are marked by the specifications and claims of the patent. *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502, 510." (p. 456.)

This Court held that "By its sale to refiners it relinquishes its exclusive right to use the patented fluid; and it relinquishes to the licensed jobbers its exclusive rights to sell the lead-treated fuel by permitting the licensed refiners to manufacture and sell the fuel to them." (309 U. S. 457.)

The substance of this Court's decision in that case was, first, that by the authorized sale of the fuel by refiners to jobbers "the patent monopoly over it is exhausted, and after the sale neither appellant nor the refiners may longer rely on the patents to exercise any control over the price at which the fuel may be resold" (p. 457) and, second, that "The licensing conditions are thus *not* used as a means of stimulating the commercial development and financial returns of the patented invention which is licensed, but for the commercial development of the business of the refiners and the exploitation of a second patent monopoly not embraced in the first." (p. 459.)

In the *Univis* case the manufacturing is not completed by the initial manufacturer of blanks for that is not the final patented product, i.e. a lens. In the *Univis* case the manufacturing has to be done by stages because each article manufactured is not completed as a lens until it is finally adjusted and fitted to the face of the patient and not released from the patent monopoly until that is accomplished. Each *Univis* licensee is a restricted licensee and with the exception of the last licensee cannot pass complete title or make an outright sale—only a qualified title can pass. Such restrictions do not enlarge the monopoly: they restrict it to a limited use and limited persons to enable the patentee to get his reward. This Court held:

"He may grant licenses to make, use, or vend, restricted in point of space or time, or with any other restriction upon the exercise of the granted privilege, save only that by attaching a condition to his license he may not enlarge his monopoly and thus acquire some other which the statute and the patent together did not give." (309 U. S. 436, 456.)

In the case at bar the licensing condition is just the reverse of the *Ethyl* case, to-wit, it is one "*used as a means of stimulating the commercial development and financial returns of the patented invention.*" The article here which embraces both the unfinished "blank" and the finished lens is not released from the dominion of the patent until the unfinished "blank" is completed as a lens. There is no attempt in the license to further control the price of this completed patented article—the lens itself—after it is released from the dominion of the patent.

In the event a wholesale distributor licensee sells the uncompleted "blank" to an unauthorized purchaser and that unauthorized purchaser undertakes to do further manufacturing on this "blank" in order to make it a usable article and a "Univis lens" and sells it as such, the unauthorized purchaser would undoubtedly be a contributory infringer, liable as such.<sup>1</sup> Therefore, the "blank" is sold under the dominion of the patent under a restricted license until further manufacturing steps are taken with regard to it and it is converted into a completed lens and sold as such, and as long as this condition prevails it is not a practical usable article of commerce in which anyone could deal as a lens without the license of the owner of the patent. Anyone purchasing this unfinished "blank" from a licensed wholesale distributor and doing further manufacturing process or work on it, as would be necessary to make it a usable finished lens, without license from the patent owner,

<sup>1</sup> See *Univis, et al. v. Benedict*, Ex. M, R. 558 and *Univis, et al. v. Morgan*, U. S. D. C. W. D. Mo., Ex. B, R. 64 (unreported).



The Univis Corporation, would be a contributing infringer. A license is an agreement not to sue for infringement during the term of the license period and in thus agreeing not to sue for infringement by the granting of a license, The Univis Corporation can lawfully exact the condition from the retail licensee who purchases the "blank" from the wholesale distributor to do this additional manufacturing work and not sell the result at less than the minimum price stipulated and then with a limited title to a special class of persons.

The Government asserts that the facts in the present case are identical with those in the *Ethyl* case. **On the contrary, in this case the owner of the patents neither manufactures nor sells the product covered by the patents. Neither does the distributor or finishing retailer in the case at bar resell the patented article which is the finished lens.** Under their licenses here the sales made by the prescription licensee or the finishing retailer of the completed article are the first sales made of the patented article which for the first time releases it from the patent monopoly and after such sales there is nothing in the Univis licenses undertaking to further restrict the article subsequent to this release from the patent monopoly. There is no attempt to use one patent to help maintain a monopoly of another as in the *Ethyl* case.

A true test of whether the appellees here, by the licenses involved, are attempting to unlawfully extend the patent monopoly is to determine what the situation would be if the present retail finishing and prescription licensees of The Univis Corporation had no licenses and undertook to make or sell the Univis patented lenses. Such conduct of finishing the lenses by a retailer, whether in his own plant or that of a distributor, and the sale of the lens, would constitute infringement of the lens patents. The Univis licenses do not extend the patent monopoly beyond the bounds of the statutory grant: they only control that which lies within it.

The profit of the licensor, Univis Corporation, is the royalty of fifty cents per blank. To the contrary "Appellant" (Ethyl) neither owns nor sells the patented fuel nor derives any profit through royalties or otherwise from its sale." *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436, 459.

We stand on the ~~proposition~~ position that unlawful makers of lenses from blanks would be such infringers under the conditions existing in the case at bar, *in contrast to the Ethyl jobbers who would not be infringers under the facts of the Ethyl case where the monopoly over patented fluid was already exhausted.*

In the *Ethyl* case this Court held that when the Ethyl Corporation granted its licenses to the refiners to make, use and sell the lead-treated gasoline under three of its patents and the refiners proceeded to so make and sell the gasoline containing the patented fluid under the main patent, that product was released from the monopoly of the patents and became an ordinary article in the usual channels of trade and commerce at the time of its first sale with no right on the part of the refiners or the patent owner to impose restrictions, whether as to price or otherwise, for its resale by the jobbers. It could not be remonopolized by second or third patents in mixing fluid with gasoline.

"By its sales to refiners it relinquishes its exclusive right to use the patented fluid; and it relinquishes to the licensed jobbers its exclusive rights to sell the lead-treated fuel by permitting its licensed refiners to manufacture and sell the fuel to them. And by the authorized sales of the fuel by refiners to jobbers the patent monopoly over it is exhausted, and after the sale neither appellant nor refiners may longer rely on the patents to exercise any control over the price at which the fuel may be resold." (p. 457.)

That this Court did not question the right of a patentee to sell to price cutters is shown by the statement of the Court as follows:

"The picture here revealed is not that of a patentee exercising its right to refuse to sell or to permit his li-

censee to sell the patented products to price cutters. Compare *United States v. Colgate & Co.*, 250 U. S. 300 with *United States v. A. Schroeder's Son*, 252 U. S. 85. A very different scene is depicted by the record." (p. 457.)

In the case at bar the exact same "scene is depicted" and all The Univis Corporation is undertaking to do is to exercise "its right to refuse to sell or to permit his (its) licensee to sell the patented product to price cutters" or to others disapproved by The Univis Corporation.

In the *Ethyl* case the jobber did absolutely nothing as to the mixing of the fluid with the gasoline or in any way contributing to the making of the patented product. All he did was to **resell** the completed and finished patented product after the right to exclude others from selling it has been released by the Ethyl Corporation and the refiners have made and sold it to the jobber.

Thus in the *Ethyl* case the jobber *resold* the lead-treated gasoline concerning which he did not in any way participate in the making and which the refiner was authorized to sell to him by his license. Hence, he would have committed no act of infringement, even without any license.

But in the Univis instance if the retail finishing or prescription and fitting retailer were to undertake to participate in the manufacture of the completed lens in any way, as he must do in order to sell it; and if he has no license, he would be an infringer.

This exact question was decided in *Univis v. Benedict*, U. S. D. C. S. D. W. D. of Ohio (unreported, see R. 558), as to one of the patents which involved lenses where the Honorable Robert Nevin said:

"The patent in question was granted to Watson and Culver, on June 14, 1927, and is No. 1,632,208. According to the patent, the invention relates to lenses particularly those which are used with spectacles and the like. . . . The patent, and particularly the claims thereof, call for a 'fused bifocal lens' or a 'bifocal lens.'

It is apparent that the patent was intended to and does cover the finished article, ground and polished and ready to be used by the consumer or wearer. Lenses are first manufactured in the form of 'blanks' such as plaintiffs' Exhibit No. 1 in this case. The 'blank', however, is not in form to be used as an eyeglass lens. To be put in such condition, the 'blank' must be 'surfaced' and 'ground' to fit the eye of the patient or to make the lens comply with the prescription of the oculist who prescribes it. After this further manufacturing operation a lens may then take on the appearance of the lens marked Plaintiffs' Exhibit No. 2, in this case. It is absolutely essential that this further manufacturing process take place in order that the rough 'blank' may be transformed into the finished product. **The making of the 'blank' is but a step in the manufacture of the lens which the patent is meant to and does cover. The claims are broad enough to cover the 'blank' as well as the finished eyeglass or lens."**

The test of the government's position, that the making of the blank exhausts the patent monopoly in a lens patent, is whether such patented elements, existing in the rough in a blank, will be sold for the purpose of being made into a lens is infringement of the lens patents. This cannot be done because as stated in *Leeds & Catlin v. Talking Machine Company*, 213 U. S. 325, "patented elements of a patented combination may not be sold for use therewith" and "it was infringement to sell record discs substantially adapted therefor, to the users of a patented talking machine." This doctrine was reaffirmed in *Carbice Corporation v. American Patents*, 283 U. S. 27. This has been long the rule since *Cotton Tie Co. v. Simmons*, 106 U. S. 89, where a cotton tie band and buckle were once sold and the patentee's compensation given to him, yet, an attempt later to recombine the band and buckle was held to be an infringement for this putting together again of the elements to again bring about the combination, was infringement, just as the blank, if worked into a lens in infringement of the lens patents, would be an infringement.

Thus the true test of any violation of the Sherman law is whether the public is injured—that is, **whether they are deprived of something to which they have a right.** *Northern Securities Co. v. United States*, 193 U. S. 197, 24 Sup. Ct. 436, 48 L. Ed. 679. *Rubber Tire Wheel Co. v. Milwaukee Rubber*, 154 F. (358 (C. C. A. 7); cert. dismissed per stipulation, 210 U. S. 439. Applying this test to the facts of the case at bar, if the wholesale distributor, under its license, sells an incompleated “blank” the public is not injured by another license from the patent owner to the retail dealer limiting the price at which this retailer dealer can sell the incompleated “blank” which he finishes into a completed lens, because the public is not deprived of anything to which it had a right, since the public had no right to the further processing or manufacturing on the incompleated “blank” in order to convert it into an article of commerce as a completed lens. This was an exclusive right granted under the patent law to the owner of the patent, The Univis Corporation, in this instance; and in licensing the retail dealer to complete the manufacture and sell the completed lens the owner of the patent had the right to exact various conditions in the license.

Therefore, the fact remains in this case that The Univis Corporation does not sell and transfer the title of a completed article of manufacture or release the same from the dominion of the patent until the final finishing or prescription licensee performs the last stage of the invention:

## II. The Supply by the Wholesaler-Grinder of a Ground or Partly Ground Lens Under a Restrictive License to a Prescription Licensee Does Not Release the Article From the Patent Monopoly.

The Appellees have followed the policy of licensing under the lens patents in the jobber and retailer fields so as to ensure the necessary performance of different parts of the patent monopoly. These are valid restrictive licenses.



limited to different fields. *General Pictures Company v. Electric Company*, 305 U. S. 124-127.

The purchase of a lens to the peculiar requirements of an individual patient starts a train of events in this license system that constitute a single transaction and a single sale of a lens. It is only when this single sale is finally made that the restrictive clauses of the license agreements are at an end because the monopoly has been satisfied: and the lens is complete as called for by the lens patent. "The patents cover the finished lens." (R. 673, Finding VI.) *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, 456.

Let us look at what actually occurs. A patient comes into the establishment of a prescription licensee, either bringing his prescription, which has been prepared for him by an eye doctor, or he is examined by the prescription licensee and a prescription is prepared. Then the prescription licensee, an optometrist, in either event makes a careful examination of the patient to "design" the lenses to fit that particular patient's reading habits, occupation and facial characteristics and differences between the eyes of the patient. This entails the measurement of the vertical and lateral displacement of the eyes in the face with respect to the nose; the pupillary width between pupils, and numerous other similar factors.<sup>1</sup>

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<sup>1</sup> *Finding IX*. "This licensee is known as a 'representative' in the trade. The prescription licensee may be either an optometrist, oculist or eye physician or an optician who either refracts to write a prescription and designs or designs only and orders lenses so ground by a wholesaler. In some instances prescription licensee does edging, drilling, and mounting of the lenses. His patient either brings a prescription to him for glasses prescribed by an ophthalmologist or the 'representative' may refract the patient's eyes and write the prescription himself. In either event he also examines the patient and writes out a specification or 'design' instructions which he forwards with the prescription to a lens grinder who is a licensed wholesaler or finishing licensee who manufactures the completed lenses from blanks in his possession.

(Continued on next page)

Someone must now grind the lens according to the prescription and design instructions. Obviously, it makes no difference in this single transaction for this single customer whether this work is done, so long as it is correctly done, by a wholesaler-grinder licensee for the account of this patient and the prescription licensee, or whether it is done in the establishment of the retailer, as is the case with the finishing licensee, or in a central plant of a manufacturer. In many instances, at least a part of the grinding is done in the prescription licensee's establishment. (R. 674.) The point we wish to emphasize is that as a matter of practice and fact, everything for this single patient which is to terminate in a single sale of a completed pair of lenses **is but one transaction in which the prescription licensee and the distributor licensee participate under restrictive licenses to make up the completed lens.** The physical distribution of the work is immaterial. When this patient says for the first time "I accept these eyeglasses" this is the first complete satisfaction and embodiment of the patent claims and the first release from the restrictive licenses and patent monopoly into the channels of trade. This is the first time anyone has a right, if the patient wished to do so, to resell the lenses without restriction. Naturally, he would probably not do so, because the lenses

These 'design' instructions adapt the prescription glasses to the special eye conditions of the patient such as the size, shape, contour of the lens to conform with the patient's peculiar facial characteristics; and the prescription licensee designs the size, heights and positioning of the reading segment to conform to the patient's particular vocation and other personal habits and he has computed the angle of the lenses to give that vision, because while many prescriptions may be alike all 'design' instructions are substantially different due to the differences in individuals who may have the same eye defects to be cured by the prescription. The representative, optometrist, or his equivalent who is licensed, has his order filled and the lenses are delivered to him. He then again fits and adjusts as well as tests the lenses to see whether they are in accordance with the prescription and design instructions and also whether they actually fit and satisfy the patient. It is not until all of this work on the lenses is completed that the final sale of completed lenses is made to the ultimate user. (R. 674.)

would fit no one else. The whole procedure is a reasonable one necessary not only to the patentee's enjoyment of his rights but equally necessary to the patient's interest. This is hardly a conspiracy between these defendants to violate the anti-trust laws. The prescription license, therefore, is not an attempt to control the resale of the patented lenses for the sound reason of fact found by the Court below, that the lens has never been completed and put into the channels of commerce under the patent until the licensee makes his sale. (Finding IX, R. 675.) Until such completion of the lens, full and complete title never passed without such restrictions from the distributor to the prescription licensee, but only moved with this limited property right under the patent, because the lens was not finally made ready for release. It was only the sale to the patient for whom specially designed, that concluded the transaction—the first sale to the public into the channels of commerce of the finished and accepted lenses thereby releasing the monopoly of the patent, whether the sale was by the finishing or prescription licensee. As Mr. Justice Black said in *General Talking Pictures v. Electric Company*, 305 U. S. 124, 128:

“Almost a century ago, this Court asserted, and time after time thereafter it has reasserted, that *when an article described in a patent is sold and ‘passes to the hands of a purchaser, it is no longer within the limits of the monopoly.’*”

The charge by the distributor to the prescription licensee for his share of the work of grinding in his stage of the manufacture was not a sale because the distributor licensee has a restrictive license. *United States v. General Electric Co.*, 272 U. S. 476, 490:

“He does not thereby sell outright to the licensee the articles the latter may make and sell, or vest absolute ownership in them. He restricts the property and interest the licensee has in the goods he makes and proposes to sell.”

The Lens Company might well, as it does upon occasions when conditions permit, make the lens for the re-

tailer finishing or prescription licensee; and no one would deny that the licensor could specify the price at which such lens should be sold.

The distributor-grinder acts merely as the agent or employee for hire of the prescription licensee to do the mechanical work of grinding or partial grinding as one stage of the manufacturing process of which the final fitting and final sale of the prescription licensee to the patient are the final stages. No other sale of the complete lens for a particular patient is "made under the patents or the authority of their owner. R. S. Secs. 4884, and 4898 (35 U. S. C. Secs. 40 (and 47). *Moore v. Marsh*, 7 Wall. 515, 521. *Waterman v. Mackenzie*, 138 U. S. 252, 256. *Gardner v. Wilder*, 10 How. 477, 494. *United States v. General Electric Co.*, *supra*. *Robinson on Patents*, Secs. 762, 763, 792, 806, *et seq.*" *General Pictures Co. v. Western Electric Co.*, 304 U. S. 175, 181.

Where articles are under restrictive license, the licensees are mere agents for the patent owner; and the manufacturing work that they do on the subject matter is no different than if all the work should be done by the patent owner in his own plant and then sold to the patient. The patent owner may manufacture in his own plant or license others in various fields to do so. *General Pictures v. Western Electric Co.*, 305 U. S. 124, 127; *Ethyl Gasoline Co. v. United States*, 309 U. S. 436; *United States v. General Electric*, 272 U. S. 476-490. But that is not practical in this industry. In either event, the first and only sale of this completed article is when it is sold to the patient. It would seem immaterial, as a matter of law, whether the manufacturing is done by stages under the control of the patentee at different establishments or at one place. For instance, the Univis Lens Company sells a very small percent of its production of finished lenses for special prescriptions. (R. 666.) All the work of making the complete lens from blank to finished product is made in a single plant. The Government does not challenge its right to do

this. This is merging in one place that which necessity usually requires to be done in multiple places. *Appalachian Coals, Inc. et al. v. United States*, 288 U. S. 344, 376. But what difference does it make if the same steps are performed in multiple plants because practical trade necessities demand it? This the appellant has never been able to answer. This record shows that there is no restriction of production or sales, but to the contrary, a steady expansion constantly being pressed, and no attempt was made to limit production.<sup>1</sup> *Appalachian Coals, Inc. et al. v. United States*, 288 U. S. 344, 376.

In *Mitchell v. Hawley*, 16 Wall. (83 U. S.) 544 the Court said:

"Sales of the kind may be made by the patentee with or without conditions, as in other cases . . . as the instrument of conveyance from the patentee to him, which describes all the title he ever had, expressly stipulates that he shall not in any way or form dispose of, sell, or grant any license to use the said machines beyond the expiration of that term of the patent, and the form of the license which he gave to the purchasers shows conclusively that he understood that he was not empowered to give a license which should extend beyond that limitation." (pp. 548-550.)

In *General Pictures Co. v. Western Electric Co.*, 305 U. S. 124, 127; this Court said: "That a restrictive license is legal, seems clear."

The case of *United States v. General Electric Co.*, 272 U. S. 476, *supra*, establishes that:

" . . . Conveying less than title to the patent, or part of it, the patentee may grant a license to make, use and vend articles under the specifications of his patent for any royalty or upon any condition the performance of which is reasonably within the reward which the patentee by the grant of the patent is en-

<sup>1</sup> See page 17 for statement of steady expansion of the number of licensees.



titled to secure. It is well settled, as already said, that where a patentee makes the patented article and sells it, he can exercise no future-control over what the purchaser may wish to do with the article after his purchase. It has passed beyond the scope of the patentee's right. \* \* \* But the question is a different one which arises when we consider what a patentee who grants a license to one to make and vend the patented article may do in limiting the licensee in the exercise of the right to sell. The patentee may make and grant a license to another to make and use the patented articles but withhold his right to sell them. The licensee in such a case acquires an interest in the articles made. He owns the material of them and may use them. But if he sells them, he infringes the right of the patentee, and may be held for damages and enjoined. If the patentee goes further, and licenses the selling of the articles, may he limit the selling by limiting the method of sale and the price? We think he may do so, provided the conditions of sale are normally and reasonably adapted to secure pecuniary reward for the patentee's monopoly." (pp. 489, 490.)

That announcement of the law by this Court fits the facts of the case at bar exactly and the conditions imposed in the license here in question do nothing more than provide the conditions of sale by the licensee which "are normally and reasonably adapted to secure pecuniary reward for the patentee's monopoly." *United States v. General Electric*, 272 U. S. 476, 490. It is not believed that any case can be found to deny a patent owner the reward sought under the licensing system of The Univis Corporation, covering what otherwise would be the manufacturing in one plant and which extends only to the first sale to a patient-customer of the article claimed by the patents, i.e., a lens.

The restrictive license situation here is closely akin to that in *General Talking Pictures Corp. v. Western Electric*, 304 U. S. 175, 181; and 305 U. S. 124, 126, where this Court said:

"Any use beyond the valid terms of a license is, of course, an infringement of a patent." (305 U. S. 126.)

The Transformer Company in that case, just as the distributor finishing licensee in this case, was licensed for a limited use by legal restrictions in the license. The reward sought by The Univis Corporation, owner of the patents, was that reasonable one of insuring its future profits from the sale of lenses by requiring in its license that distributors only make lenses ready for final fitting to be delivered only to the prescription licensee and not to be released into the general channels of trade; and the prescription licensee be restricted to sales to those who are going to wear the lenses to insure the right patient secured the right lenses. Until this restrictive use by license is accomplished by the fulfillment of the final sale of such lenses to the patient, the lenses are still within the patents and have not been transferred out of the monopoly into the channels of trade. In short, the first sale of the finished lens and first release from the monopoly is the sale of the complete eyeglass lenses to the only person who gets full title—the wearer. As the Court below found: "It is not until all of this work on the lenses is completed that the final sale of completed lenses is made to the ultimate user." Finding IX, R. 675. Anyone acquiring such lenses other than the patient for whom they were made would be simply an infringer. Again as this Court said lately in *General Talking Pictures v. Western Electric*, *supra*:

"That a restrictive license is legal seems clear. *Mitchell v. Hawley*, 16 Wall. 544. As was said in *United States v. General Electric Co.*, 272 U. S. 476, 489, the patentee may grant a license 'upon any condition the performance of which is reasonably within the reward which the patentee by the grant of the patent is entitled to secure.' The restriction here imposed is of that character. The practice of granting licenses for a restricted use is an old one; see *Rubber Company v. Goodyear*, 9 Wall. 788, 799, 800; *Gamewell Fire-Alarm Telegraph Co. v. Brooklyn*, 14 F. 255. So far as ap-

pears, its legality has never been questioned." (305 U. S. p. 127.)

Certainly until this reasonable restriction of the Univis license for the protection both of the public and the patent owner of having the lens sold only to the wearer has been fulfilled by the prescription licensee or finishing licensee who deals with the patient, the lens is not released from the patent monopoly and no sale has taken place. This same distinction was made in the *General Talking Pictures Corp.* case, where this Court said:

"As the restriction was legal [the sale for a specified use]\* and the amplifiers were made and sold outside the scope of the license, the effect is precisely the same as if no license whatsoever had been granted to Transformer Company." (305 U. S. 127.)

So here the restricted license being legal, this Court will find "that while the devices embody the inventions of the patents in suit, they were not manufactured or sold 'under the patents' and 'did not pass into the hands of a purchaser in the ordinary channels of trade.'"

The District Court below upheld the restrictive licenses with the exception of the prescription license. His error was in the fact that because the prescription licensee's work was divided between two establishments—his own and that of the distributor-grinder that these made it different from the finishing licensee license, which he upheld, where all the work was done in one establishment. The patent control continued over the making of the blank and the making of the lens from the blank wherever and by whatever steps it was made, until the lens was sold to the patient, which was the final sale. Judge Nevin in *Univis v. Benedict*, and Judge Otis in *Univis v. Morgan*,<sup>1</sup> both so held.

Appellees have a right, through their license contracts, to control the quality of the blanks as parts used in their

\* Our insertion.

<sup>1</sup> Exhibit M, R. 558; Exhibit B, R. 64.

patented lenses. This is an essential right for any manufacturer. *Pick v. General Motors*, 299 U. S. 3, 4; *International Business Machines Corp. v. United States*, 298 U. S. 131, 140.

### III. Restrictive Clauses in Patent License Agreements are Legal.

If a patent license is valid, it may contain restrictions as to the persons to whom the property can be sold, the price, the conditions of its manufacture necessary for the production of quality goods and the customers to whom it should be sold. These restrictions will not be examined as to their reasonableness or the reasons for them. The patentee has the right not to make or sell at all. He may withhold the property without restriction because the public is securing something it would not otherwise have by reason of his invention. Therefore, any restrictions within the scope of this patent which he puts on its licensees are valid. This is particularly true where those restrictions, as in this case, are essential restrictions in order to accommodate the use of the patent to the conditions under which it must be manufactured and to insure the quality of the product so that the patentee can enjoy the benefit of the patent to the maximum extent. There is also the consideration that is close to the minds of all of us that such restrictions should be upheld when they advance the public interest and promote the sciences and the useful arts.

The licenses in this case grant a non-exclusive, non-assignable, revocable license. This has been approved traditionally for many years. *Waterman v. Mackenzie*, 138 U. S. 252; *Cotton Tie Co. v. Simmons*, 106 U. S. 89; *United States v. General Electric Co.*, 272 U. S. 476; *Carbice Corp. v. American Patents Corp.*, 283 U. S. 27; *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436; *Adams v. Burke*, 17 Wall. (84 U. S.) 453.

A patentee has the right of deciding to whom he will sell or not sell. His reasons or motives are not material. If he elects as a policy not to deal with price cutters in licensing his patented property or elects not to sell through licensees in environments that are not in keeping with the maintenance of the quality of his products as in chain stores, corner drug stores or from push carts, that is his privilege irrespective of his motives. Even the extent to which he licenses is not a matter in which he can be properly controlled.

*Bement v. National Harrow Co.*, 186 U. S. 70;

*Paper Bag Patent Case*, 210 U. S. 405;

*U. S. v. United Shoe Machinery*, 247 U. S. 32;

*U. S. v. General Electric Co.*, 272 U. S. 476;

*Ethyl Gasoline Corp. et al. v. U. S.*, 309 U. S. 436.

The Government complains that the Appellees do not license everyone irrespective of their qualifications to make these lenses. Their position is that even though a person without qualifications or any experience or financial stability should wish to grind these lenses no matter how defectively and sell them, there is nothing that The Univis Corporation could do about it because it once released the blank for a royalty of fifty cents by its blank manufacturing licensee. It is obvious that such a course of action would ruin the reputation of the patented lens. The other alternative is of manufacturing such a lens wholly within a manufacturing plant. This is not feasible in this trade except in a very small fraction of one per cent. The unreasonableness of the position of the Appellant in this matter is demonstrated by the fact that such a course of action would not only deprive the patentee of the enjoyment of his patented property because that course of action would destroy it, but it is obvious that this difficult lens to make, would often be produced by inferior workmanship, unskilled labor and poor machinery, characteristic of the unqualified which certainly would not be in the public interest or that of the patentee.



Price cutting, particularly price cutting which results in unfair practices, has been condemned by this Court in *Bitterman v. L. & N. R. Co.*, 207 U. S. 205; *United States v. American Tobacco Company*, 220 U. S. 106; *Standard Oil v. United States*, 221 U. S. 1; *United States v. Colgate*, 250 U. S. 300; and also by this Court in *Old Dearborn Distributing Co. v. Seagrams-Distillers Corp.*, 299 U. S. 183; *The Pep Boys, etc. v. Pyroil Sales Co., Inc.*, 229 U. S. 198. Congress has disapproved price discriminations: Robinson-Patman Act, Act of June 19, 1936, c. 592, sec. 1, 49 Stat. 1526, 15 U. S. C. A. 13; and Miller-Tydings Amendment August 17, 1937, c. 690, Title VIII, 50 Stat. 693, 15 U. S. C. A. 1.

The patent owner may arbitrarily select his own customers and licensees and may lawfully refuse to sell to or license others, and may lawfully restrict his licensees to selling the patented product to certain classes of customers. The Government's contention is that the Univis Corporation has declined to license persons for a variety of reasons. Our position is that that is a legal right under patent licenses and the motive or reason is immaterial. In *U. S. v. United Shoe Machinery Co.*, 247 U. S. 32, 58 (1918) this Court said:

"Indeed we said in the *Paper Bag Patent Case* that he may keep his invention out of use. Therefore, he necessarily has the power of granting it to some and withholding it from others, a right of selection of persons and terms." (p. 58.)

And in the *Paper Bag Patent Case*, 210 U. S. 405, 429 (1908), this Court said:

"As to the suggestion that competitors were excluded from the use of the new patent, we answer that such exclusion may be said to have been of the very essence of the right conferred by the patent, as it is the privilege of any owner of property to use or not use it, without question of motive." (p. 429.)

Likewise, the Government charges that it is unlawful for a patentee to refuse to license because the prospective

licensee is a price cutter or is a bait advertiser. Here again, not only are the foregoing authorities applicable, as the right to decline to deal with a licensee for any reason, but the general right, irrespective of patents, of any trader to decline to deal, if it pleases him, with anyone, and in particular with the price cutter, has been well established by the above cases. There is no evidence in this case of any combination of the defendants with the licensees by which any agreement was arrived at either to grant, refuse, or cancel licenses of others. On the contrary, the record shows that in many instances licenses were refused or cancelled against the recommendations and proposals of other licensees, and in other cases where other licensees objected to the prospective licensees, the Univis Corporation granted the licenses, all in the exercise of its independent judgment. (R. 108-9.) The case primarily relied upon by the Government is the *Ethyl* case in support of its proposal that a patent licensee does not have the right to decline to deal, but the *Ethyl* case is excellent authority for this procedure of the appellees where it says:

"The picture here revealed is not that of a patentee exercising its right to refuse to sell or to permit his licensee to sell the patented products to price cutters." (309 U. S. 436, 457.)

And this Court further said in that case:

"This, we assume, for present purposes, it could lawfully do by virtue of the power conferred by its patent to exclude any or all others from selling the patent product." (p. 452.)

. . . . .

"He may grant licenses to make, use or vend, restricted in point of space or time, or with any other restriction upon the exercise of the granted privilege, save only that by attaching a condition to his license he may not enlarge his monopoly and thus acquire some other which the statute and the patent together did not give." (p. 456.)

This right so long recognized by this Court in repeated decision has become a rule *stare decisis*.

Thus in *Bement v. National Harrow Co.*, 186 U. S. 70, 88, 91, 93:

"Notwithstanding these exceptions, the general rule is absolute freedom in the use or sale of rights under the patent laws of the United States. **The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts.** The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal." (p. 91.)

"The owner of a patented article can, of course, charge such price as he may choose, and the owner of a patent may assign it or sell the right to manufacture **and sell the article patented upon the condition** that the assignee shall charge a certain amount for such article." (p. 93.)

"There is nothing which violates the act [The Sherman Act] in the agreement that plaintiff would not license any other person than the defendant to manufacture or sell any harrow of the peculiar style and construction then used or sold by the defendant. It is a proper provision for the protection of the individual who is the licensee, and is nothing more in effect than an assignment or sale of the exclusive right to manufacture and vend the article." (p. 94.)

This Court later held that patents are property and entitled to the same rights and sanctions as other property, which would necessarily include the right on the part of the patentee to exclude or include whomsoever he chose as one entitled to use the property, arbitrarily or for reasons, as long as no legal wrong was committed against the public or another, for this Court said:

"As to the suggestion that competitors were excluded from the use of the new patent we answer that

such exclusion may be said to have been of the very essence of the right conferred by the patent, **as it is the privilege of any owner of property to use or not use it, without question of motive.**" *Paper Bag Patent Case*, 210 U. S. 405, 429.

The reason for the right to control prices under a license is that a patentee, when he executes a license, parts with the monopoly privilege which is property. In order to prevent any injury to this property right he has the right to surround the license privilege with such limitations as are necessary to insure the enjoyment of the patent property. *Bement v. National Harrow Co.*, 186 U. S. 70; *U. S. v. General Electric Co.*, 272 U. S. 476; *Indiana Manufacturing Co. v. Case Threshing Machine Co.*, 154 Fed. 365, certiorari denied 207 U. S. 603; *Straight Side Basket Corp. v. Webster Basket Co.*, 82 Fed. (2d) 245; *Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co.*, 154 F. 358; see also *McCormack, Restrictive Patent Licenses and Restraint of Trade*; 31 Columbia Law Review 743.

And in *United States v. United Shoe Machinery*, 247 U. S. 32, 57 (1918):

"Of course, there is restraint in a patent. Its strength is in the restraint, **the right to exclude others from the use of the invention, absolutely or on the terms the patentee chooses to impose.** This strength is the compensation which the law grants for the exercise of invention. Its exertion within the field covered by the patent law is not an offense against the Anti-Trust Act. \* \* \*

"\* \* \* We must keep in mind the quality of the right we are considering and that the inventor gets nothing from the law that he did not have before and **that the only effect of his patent is to restrain others from dealing with or using its device.** *United States v. Bell Telephone Co.*, 167 U. S. 224, 239; *Paper Bag Patent Case*, 210 U. S. 405, 424; *Motion Picture Co. v. Universal Film Co.*, 243 U. S. 502, 510. Or to put it another way, the inventor does not get from the law

a right to a use that he did not have before but he gets the right to an **exclusive** use. Take this from him and you take all that the law gives him and to secure which the public faith is pledged. Chief Justice Marshall in *Grant v. Raymond*, 6 Pet. 218, 242.

"Indeed, we said in the *Paper Bag Patent Case* that he may keep his invention out of use. Therefore, he necessarily has the power of granting it to some and withholding it from others, a right of selection of persons and terms. \* \* \*" (pp. 57-58.)

So long as there is no conspiracy, the independent trader, even without patents, has an equivalent right.

In *Federal Trade Commission v. Beech-Nut Co.*, 257 U. S. 441, 452, 453:

"By these decisions it is settled that in prosecutions under the Sherman Act a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale." (pp. 452-3.)

And in *U. S. v. Colgate & Co.*, 250 U. S. 300, 307, 308:

"In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell. The trader or manufacturer, on the other hand, carries on an entirely private business, and can sell to whom he pleases." *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 320. "A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade." *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600, 614. See also *Standard Oil Co. v. United States*, 221 U. S. 1, 56; *United States v. American Tobacco Co.*, 221 U. S. 106, 180; *Boston Store of Chi-*



*cago v. American Graphophone Co.*, 246 U. S. 8. In *Dr. Miles Medical Co. v. Park & Sons Co.*, *supra*, the unlawful combination was effected through contracts which undertook to prevent dealers from freely exercising the right to sell." (p. 308.)

Therefore, the procedure of checking licensees or the reasons for refusing or granting licenses are immaterial so long as the action is within the exercise of the dominion of the patents.

Price can be controlled under patent licenses. The appellant admits that this has been the unbroken rule of this Court. *Bement v. National Harrow Co.*, 186 U. S. 70, 88, 91; *United States v. General Electric Co.*, 272 U. S. 476, 490.

Its new position is that the price control should cease upon the sale of the blank even though the patent calls for the complete lens; and more important, that this Court should reverse its holdings in the foregoing cases and decide that control of price is unlawful under a patent license. (Appellants' brief, p. 45). We submit the law is well founded upon the theory that unless the patentee receives the financial reward through adequate prices, the taking out of a patent will be a futile gesture. Unless the patentee is suitably compensated there is no inducement for him or his licensees to put into public use the teachings of the patent and make the heavy investment always incident to the development and merchandising of inventions. To say otherwise is to ignore the practical teachings of industry and the common aspirations of human nature, for as Chief Justice Marshall said in *Grant v. Raymond*, 6 Peters, 218, 241, the purpose "to promote the progress of useful arts is the interest and policy of every enlightened government."

The appellant refuses to treat patent rights like other property: it insists on regarding it as a very special and

doubtful privilege which does not have the ordinary rights of property. (Appellant's brief pages 31-2.)<sup>1</sup>

<sup>1</sup> From "The Writings and Speeches of Daniel Webster," National Edition 1903, Vol. 15, pp. 438-9, Daniel Webster is reported as saying in 1852:

"• • • The Constitution does not attempt to *give* an inventor a right to his invention, or to an author a right to his literary productions. No such thing. But the Constitution *recognizes* an original, pre-existing, inherent right of property in the invention, and authorizes Congress to secure to inventors the enjoyment of that right. But the right existed before the Constitution and above the Constitution, and is, as a natural right, more clear than that which a man can assert in almost any other kind of property. What a man earns by thought, study and care, is as much his own, as what he obtains by his hands. It is said that, by the natural law, the son has no right to inherit the estate of his father—or to take it by devise. But the natural law gives a man a right to his own acquisitions, as in the case of securing a quadruped, a bird, or a fish by his skill, industry, or perseverance. Invention, as a right of property, stands higher than inheritance or devise, because it is *personal earning*. It is more like acquisitions by the original right of nature. In all these there is an effort of mind as well as muscular strength.

"Upon acknowledged principles, rights acquired by invention stand on plainer principles of natural law than most other rights of property. Blackstone, and every other able writer on public law, thus regards this natural right and asserts man's title to his own invention or earnings.

"The right of an inventor to his invention is no monopoly. It is no monopoly in any other sense than as a man's own house is a monopoly. A monopoly, as it was understood in the ancient law, was a grant of the right to buy, sell, or carry on some particular trade, conferred on one of the king's subjects to the exclusion of all the rest. Such a monopoly is unjust. But a man's right to his own invention is a very different matter. It is no more a monopoly for him to possess that, than to possess his own homestead.

"But there is one remarkable difference in the two cases, which is this, that property in a man's own invention presents the only case where he is made to pay for the exclusive enjoyment of his own. For by law the permission so to enjoy the invention for a certain number of years is granted, on the condition that, at the expiration of the patent, the invention shall belong to the public. Not so with houses; not so with lands; nothing is paid for them, except the usual amount of taxation; but for the right to use his own, which the natural law gives him, the inventor as we have just seen, pays an enormous price. Yet there is a clamor out of doors, calculated to debauch the public mind." (Emphasis by Mr. Webster.)

This Court has traditionally, without exception, for a long period of years, so that the rule has become *stare decisis*, adhered to the principle that a patent owner has a right to fix the price at which his licensee sells the patented property so long as the acts are those rightfully under the patent laws.<sup>1</sup> Other Courts have long followed this unbroken doctrine. Conversely, the patentee can control such prices by licensees if the acts, when unlicensed, would have amounted to contributory or direct infringement of the patent in question. And this rule has been arrived at in full recognition that a patent represents the contribution of an inventor of something the public would not have otherwise had.

In *Bement v. National Harrow Co.*, 186 U. S. 70, 93:

"The provision in regard to the price at which the licensee would sell the article manufactured under the license was also an appropriate and reasonable condition. It tended to keep up the price of the implement manufactured and sold, but that was only recognizing the nature of the property dealt in, and providing for its value so far as possible. This the parties were legally entitled to do. The owner of a patented article can, of course, charge such price as he may choose, and the owner of a patent may assign it or sell the right to manufacture and sell the article patented upon the condition that the assignee shall charge a certain amount for such article."

This is also expressed by this Court in the case of *U. S. v. General Electric Co.*, 272 U. S. 476, 490, where Mr. Chief Justice Taft, speaking for the Court, said:

<sup>1</sup> Among the many citations of the *General Electric Co.* case by this Court are *Carbice Corp. v. American Patents Development Corp.*, 283 U. S. 27 (1931); *Standard Oil Co. (Indiana) v. United States*, 283 U. S. 163 (1931); *General Talking Pictures Corp. v. Western Electric Co.*, 304 U. S. 175 (1938), 305 U. S. 124 (1938); *Interstate Circuit Inc. v. United States*, 306 U. S. 208 (1939); *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436 (1940); *Morton Salt Co. v. G. S. Suppiger Co.*, 62 Sup. Ct. 402 (1942).

"If the patentee goes further, and licenses the selling of the articles, may he limit the selling by limiting the method of sale and the price? We think he may do so; provided the conditions of sale are normally and reasonably adapted to secure pecuniary reward for the patentee's monopoly. One of the valuable elements of the exclusive right of a patentee is to acquire profit by the price at which the article is sold. The higher the price, the greater the profit, unless it is prohibitory. When the patentee licenses another to make and vend, and retains the right to continue to make and vend on his own account, the price at which his licensee will sell will necessarily affect the price at which he can sell his own patented goods. It would seem entirely reasonable that he should say to the licensee, 'Yes, you may make and sell articles under my patent, but not so as to destroy the profit that I wish to obtain by making them and selling them myself.' He does not thereby sell outright to the licensee the articles the latter may make and sell, or vest absolute ownership in them. He restricts the property and interest the licensee has in the goods he makes and proposes to sell."

And in *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436 (1940) so strongly relied upon by the Appellant:

"He may grant licenses to make, use or vend, restricted in point of space or time, or with any other restriction upon the exercise of the granted privilege, save only that by attaching a condition to his license he may not enlarge his monopoly and thus acquire some other which the statute and the patent together did not give." (p. 456.)

The Government's position now is that the invention of the lens patents is practiced in the manufacture of the Univis lens blanks and the Appellees secure their entire reward for their invention by the sale of those blanks. In the first place, this statement is not a correct one as to the facts. There is no sale of these blanks into the "channels of commerce" but only a transfer of a limited property in the blanks restricted under license to a specific purpose of

grinding the blanks in cooperation with the prescription licensee for that licensee's patient. As this Court said in *U. S. v. General Electric*, 272 U. S. 476, 490 "He [the patentee] does not thereby sell outright to the licensee the articles the latter may make and sell, or vest absolute ownership in them. He restricts the property and interest the licensee has in the goods he makes and proposes to sell."

The Appellant, therefore, sets up an untrue factual situation and falls into error consequently in its deductions. Again, the mere fixing of the royalty on the blank is meaningless unless the making of the lenses to satisfy the patient is controlled because only by so doing is the other multiplying factor of repeat order sales insured which determines the total royalty. The Appellant well knows and virtually concedes that the law as established by this Court is against it because it throws the main weight of its argument into asking this Court to overrule the *General Electric* case, giving no sound reasons for doing so. The Government must, as it has in the past, take the position that the *General Electric* case and others long approved in this Court authorize fixing of a price by a patentee.<sup>1</sup> The Ap-

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<sup>1</sup> The following we understand was submitted by the Anti-Trust Division of the Department of Justice to the Temporary Economic Committee as grounds for legislation by Congress to change the recognized law as to licenses under patents.

"1. It should be made unlawful for any person to sell or assign a patent, or to grant any right or license under a patent, on any condition which restricts the assignee or grantee in respect of the amount of any article which he may produce under the patent, the price at which he may sell any such article, the purpose for which or manner in which he may use the patent or any article produced thereunder, or the geographical area within which he may produce, or sell such article. The foregoing prohibitions should be supplemented by a further prohibition against any other restriction embodied in a condition to any such assignment or license, which would tend substantially to lessen competition or to create a monopoly, unless such restriction is necessary to promote the progress of science and useful arts. These prohibitions, however, should not apply to any assignment of a patent or any grant of a license under a patent for use exclusively outside the United States and its territories and possessions.

(Continued on next page)



pellant says the facts fall within *Ethyl Gasoline Corp. v. U. S.*, 309 U. S. 436, to the effect that a patentee, after securing his reward by selling an article embodying the invention may not control the price, but again the factual assumption is an error because as the District Court below and other Courts have found, the article embodying the invention is the lens as the Government's Bill of Complaint fully recognized.

If the Appellant were correct that the blank should be the basis for determining a recovery under the patent, such a ruling would completely negative this Court's decision on contributory infringement or controlling by a patent elements of common commerce to be later embodied in a patent. (See pages 24-25 this brief.)

Appellant discusses the price charged by the licensee. As The Univis Corporation has the right to fix prices under its patents, the reasonableness of the price will not be determined by this Court for the sound reason set forth in *U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150, 221.<sup>1</sup>

The last primary restriction in these licenses is one that we think (in this instance in glasses for eyes) should

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<sup>1</sup> "The reasonableness of prices has no constancy due to the dynamic quality of business facts underlying price structures. Those who fix reasonable prices today would perpetuate unreasonable prices tomorrow, since those prices would not be subject to continuous administrative supervision and readjustment in light of changed conditions."

In short, the owner of a patent would enjoy the full patent monopoly if he elected to retain the exclusive privilege of producing or selling under the patent himself. He would be free to assign the patent; to grant an exclusive license; and to grant licenses to anyone he pleased. But, if he grants a license, the license must be general and unrestricted, unless he is prepared to demonstrate that a particular restriction (other than restrictions in respect of price, production, use, or geographical area) is necessary to promote science and useful arts. Restrictions in respect of price, production, use, or geographical areas would be unconditionally outlawed." (See Temporary National Economic Committee Preliminary Report pursuant to Public Resolution No. 113, Senate Document No. 95, 76th Congress, First Session, 1939.)

certainly commend itself as one vitally necessary for the enjoyment of the present patent property. The principle of control of the manufacturing conditions, specifications and quality of parts such as blanks that go into the finished lenses and the making of the finished lenses has been upheld by this Court. *Pick Mfg. Co. v. General Motors*, 299 U. S. 3, 4. This is because the enjoyment of the property and its associated goodwill is in direct proportion to the satisfaction of the customer and unless he receives a satisfactory quality of product the fact that the product is patented is an empty thing.

**IV. All of the Activities of the Univis Licensees, If Not Licensed, Would Be an Infringement of the Patents and, Therefore, Properly Controllable Under License.**

The Government urges that the monopoly is exhausted under the Univis patents on lenses by the license of the Univis Corporation to the Univis Lens Company to make the blanks and transfer them with a limited title for a specific purpose to a specific group of people. The fallacy of this position is that the rough blank has no usefulness as an ophthalmic lens as called for by the patents. (R. 673, Finding VI.) Further work must be done upon it before it becomes a lens as called for by the patents and as defined by the Government's Bill. One who sold such a blank or did further work upon it to make a lens and sold the lens would be a contributory infringer.

This blank has a distance portion of glass of one index of refraction and the near-vision insert portion of a different index of refraction of the general shape called for by the patents. It is in a crude form useful for no purpose except to meet the terms ultimately of the patents of Univis on lenses. It is not a common article of commerce. It has only one purpose and it embodies roughly the potential elements of the claims. This blank is made only for the purpose of coming within the terms of the patents.

Under such a state of facts, the case relied upon by the Government of *Carbice v. American Patents*, 283 U. S. 27, on dry ice, which is a common article of commerce and not especially made for the patented combination; *Leitch v. Barber*, 302 U. S. 458, dealing with the common article of commerce of a bituminous emulsion; and *Morton Salt v. Suppiger*, 62 S. Ct. Rep. 402 (Jan. 5, 1942), and *B. B. Chemical v. Ellis, et al.*, 62 S. Ct. Rep. 406 (Jan. 5, 1942), dealing with the control of common articles of commerce such as salt tablets, and shoe materials, have no applicability to the instant set of facts. In each of those cases there was an unwarranted attempt outside the patent monopoly by the patentees to use the patents not for the enjoyment of the patent monopoly, but only as a subterfuge to control common articles of commerce, such as dry ice, bituminous emulsion and salt. In none of those cases was the material a combination of parts specially designed but in rough form for ultimate use in the complete patented combination of elements having only one purpose, and that to be finally made into a lens inside the patent and dealt in only with that purpose in mind and with that intent.

This Court has consistently drawn the distinction between unlawful control of common articles of commerce and the lawful right of stopping a contributory infringer who is making something that has a portion of the elements or all of them, in the rough intended for the purpose *only* of ultimately infringing the patent and having no other usefulness as a common article of commerce. The case of *Leeds & Catlin v. Victor Talking Machine*, 213 U. S. 325, 333, covers the situation applying to the instant case. This distinction was drawn by this Court in the opinion of the *Carbice v. American Patents*, 283 U. S. 27, 33-35:

“Infringement, whether direct or contributory, is essentially a tort, and implies invasion of some right of the patentee. Compare *Moore v. Marsh*, 7 Wall. 515, 520; *Root v. Railway Co.*, 105 U. S. 189, 214.

"The case at bar is wholly unlike *Leeds & Catlin v. Victor Talking Machine Co.*, 213 U. S. 325, 333, on which plaintiffs rely. That was an ordinary case of contributory infringement. The Victor Company sold machines embodying a patent for a combination. Leeds & Catlin were held to be infringers because the intended incorporation in the Victor machines of the article which they sold, did not constitute a repair of the machine and hence was not within the license implied on sale. *Heyer v. Duplicator Mfg. Co.*, 263 U. S. 100. There was no suggestion that the Victor Company, which itself manufactured and sold the patented product, sought 'to derive its profits, not from the invention on which the law gives it a monopoly, but from the unpatented supplies with which it is used.' In the case at bar the plaintiffs neither sell nor license others to sell complete transportation packages. They supply merely one of the several materials entering into the combination; and on that commodity they have not been granted a monopoly. Their attempt to secure one cannot be sanctioned."

*This it is seen that the controlling factor in the Car-bice case was that the plaintiffs neither sold nor licensed others to sell the patented combination, or in any way sought to exploit or obtain any reward for themselves under the patent as to the patented thing but on the contrary, sought to set up a monopoly on the manufacture and sale of dry ice which was in itself a standard article of commerce and in which the plaintiffs had no patent monopoly.*

#### **V. There Has Been No Illegal Restraint of Trade in Fact Within or Without the License System.**

The Government introduced into this record extensive testimony as to the existence, use and sale, of numerous competing eyeglass lens bifocals.<sup>1</sup> Such lenses are

<sup>1</sup> "It must also be observed that there is no proof that the defendants exercise among themselves or by combination with others a control of all bifocal eyeglass lenses." (Opinion, R. 668.)

those produced by the American Optical Company under the title "Ful-Vue," "Panoptic" produced by Bausch & Lomb, "Wide-Sight" produced by Shuron, "Ultex" and the largest seller of them all, "Kryptok." (R. 668.) Univis made no restriction on its licensees handling these competitive lenses. (R. 668, 677, Finding XIII.)

Univis licensees are not prohibited from using and selling these bifocals of Univis competitors. (R. 197.) The percentage of Univis bifocals sold by Univis licensees as compared to other bifocals sold by them, is only between five and six per cent. (R. 199.) The record shows that Univis has licensed about 50% of the trade which percentage is constantly increasing. Consequently, among the licensees, Univis only controls five to six per cent of the business of bifocal eyeglass lenses and as an average of all outlets, it apparently is selling only about two and a half or three per cent of the total volume of bifocal eyeglass lenses. "On its face such a small per cent would not seem to be an unreasonable restraint of trade." (R. 668; ~~Opinion.~~)

There is certainly no unreasonable restraint of trade where approximately 95% of the trade is not controlled and the public has a wide variety of highly competitive bifocal eyeglass lenses from which to choose.<sup>1</sup> There is no proof of any conspiracy or any charge of any conspiracy in the Bill of Complaint with such other manufacturers of other bifocals.

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<sup>1</sup> "The Univis Corporation has consistently followed an 'open end' license policy by which all licenses of the same class are charged the same license fee and have the same prices fixed for performing the same manufacturing service; and that the licenses are open to all qualified licensees. The basis of its policy is the maintenance of highest standards of quality, service and performance by each licensee at each stage of the manufacturing process. Such policy is founded upon the peculiar nature of the business of manufacturing, prescribing, fitting and distributing eyeglass lenses in a series of successive steps, by different types of manufacturing establishments at different distances from the customer." (R. 670-1; Finding III.)



In *Standard Oil Co. v. U. S.*, 283 U. S. 163, 176; 75 L. Ed. 926; 51 S. Ct. 421, Mr. Justice Brandeis stated:

*"The output of cracked gasoline in the years in question was about 26% of the total gasoline production. Ordinary or straight run gasoline is indistinguishable from cracked gasoline and the two are either mixed or sold interchangeably. Under these circumstances the primary defendants could not effectively control the supply or fix the price of cracked gasoline by virtue of their alleged monopoly of the cracking processes, unless they could control, through some means, the remainder of the total gasoline production from all sources. Proof of such control is lacking."*

While the Court below found that Appellees control 100 per cent of the lenses sold under the trade-mark "Univis," yet it also found that we had licensed (without any price restriction) competitors such as American Optical and Shuron Optical Company so that there is no 100 per cent control by the Appellees through their own direct manufacturing operations of the patented lenses. American Optical Company makes the "Ful-Vue" lens and Shuron the "Wide-Sight."

There was no concert and common agreement between the licensor and the licensees to do anything outside of the scope of the patent licenses. *Intercircuit v. U. S.*, 306 U. S. 208, is not applicable, because in that case there was an agreement to unreasonably restrain the motion picture business amongst a group of competitive film corporations. No patent question was involved in that case: what was done was wholly outside any industrial monopoly.

And this Court has recognized that even outside of the patent law where the plan of doing business is such as to promote free competition in the public interest, that controls and restrictions may be so wholly in the public interest as not to violate the Sherman Antitrust Act, but to comply with it. This charter of economic freedom is found in *Appalachian Coals Inc. v. U. S.*, 288 U. S. 344:

"The decisions establish, said this Court in *Nash v. United States*, 229 U. S. 373, 376, 'that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade.' See *Standard Oil Co. v. United States*, 221 U. S. 1; *United States v. American Tobacco Co.*, 221 U. S. 106; *Chicago Board of Trade v. United States*, 246 U. S. 231, 238; *Window Glass Manufacturers v. United States*, 263 U. S. 403, 412; *Maple Flooring Association v. United States*, 268 U. S. 563, 583, 584; *Paramount Famous Corp. v. United States*, 282 U. S. 30, 43; *Standard Oil Co. v. United States*, 282 U. S. 163, 169.

"In applying this test, a close and objective scrutiny of particular conditions and purposes is necessary in each case. Realities must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it." (p. 36)

A patentee could make the blank in one department and then grind the lens in another department of the same plant according to the prescription of a third department and the design instructions of a fourth department and after the lens is ground deliver it to the service department which, after checking in cooperation with the sales department, would sell the lens at some stipulated price through the sales organization of the patentee-manufacturer. (In a small percentage of special prescriptions Univis does this.) All that Univis has done is only this by meeting the necessities of the public and the trade of performing these same operations by separate licensees each of whom own their own businesses. The manufacturer, if he could conduct this business in one plant, would follow the conventional practice of charging the blank out of the blank department at a fixed price to the grinding department and the grinding department would charge out the ground lens to the sales department at another price and so on

until the final price to the customer by the sales department.

This system of Univis licenses promotes competition because, instead of monopolizing all of these functions of these departments in one great factory, it shares this business with thousands of independent concerns each of whom are thereby enabled in their own community to make a livelihood, to serve the customers as well as the patentee. Is this monopoly?

This Court has held that where the percentage of the trade controlled by a group such as these licensees would not constitute a restraint of trade as a monopoly if merged together, it cannot be treated as restraint of trade because independently owned and operated. *Appalachian Coals Inc. v. U. S.*, 288 U. S. 344. Univis with all of its thousands of licensees only sells about  $2\frac{1}{2}\%$  of all of the bifocal eyeglass lenses. It has no restraint upon its licensees in selling other lenses which constitute the other  $97\frac{1}{2}\%$  of the trade. Can we say that this is an unreasonable restraint of trade because Univis has elected with an open end license policy to give thousands of independents the chance to operate and survive economically it is committing a restraint of trade which would not be the case if all the work was done in a single organization?

This Court has held that price fixing is only illegal *per se* in unpatented subject matter and that the right to fix a price, select customers and determine quality is the right of a patentee. Our point is there could be no conspiracy in carrying out these normal patent functions with licensees due to trade necessity when there would be no difference in effect if the same thing were performed in a single plant of many departments or many plants owned by a common ownership. Univis has elected not to follow the owned branch method of distribution of the optical trade but to give the independents an opportunity to enjoy their little profit of their businesses in the promotion of what it believes to be the correct system of free enterprise. This promotes competition.

The Government (brief, p. 60) misstates the rule as to price fixing being illegal *per se* in unpatented matter because it omits the careful qualification of that statement by this Court that such price fixing *per se* is illegal only in the event of existence of one or the other of two conditions: either "if the combination has a control of a substantial part of a commerce in that commodity" or "where the means for price fixing are purchases or sales of the commodity in a market operation" so that the result is the same as the control of a substantial part of the commerce in the commodity even though that be not a fact. Univis does not control either a "substantial part of the commerce" in lenses and does not have any means of strategically accomplishing the same result with a lesser per cent because its entire license system could not effect more than this minor part of the business. The District Court so found that fact (R. 677; Finding XIII); *U. S. v. Socony Vacuum*, 310 U. S. 150, 224; *Apex Hosiery Company v. Leader*, 310 U. S. 469, 485. "The nature of the restraint and its effect on interstate commerce" may be effected either through the amount or the strategy of dominating the commerce where that is of a restrictive nature. Nothing of that sort appears here: *Sugar Institute v. United States*, 297 U. S. 553, 597:

"\* \* \* The restrictions imposed by the Sherman Act are not mechanical or artificial. We have repeatedly said that they set up the essential standard of reasonableness. *Standard Oil Co. v. United States*, 221 U. S. 1; *United States v. American Tobacco Co.*, 221 U. S. 106."

The claim in appellant's brief that the Univis license system was used to control other types of goods sold by the Univis licensees is without foundation in fact. The Court made no such finding.

The fact that Univis treats all licensees of the same class alike is not an evidence, as claimed, of a conspiracy to make a rigid price control: it is required as a matter of law. Robinson-Patman Act U. S. C., title 15, sec. 13.

## VI. The Isolated Titmus Incident.

The only specific instance of restraint relied upon by the Government was the Titmus situation. The learned District Court in connection with this Titmus incident, disposed of it by saying:

"It is true that the Titmus case is but an isolated instance and it may be doubted whether the proof is of sufficient weight to justify the conclusion that in and of itself it amounts to a violation of the anti-trust acts." (R. 668.)

Univis had a right to notify Titmus it would be sued under its patents. In *Virtue v. Creamery*, 227 U. S. 8, Mr. Justice McKenna said:

"\* \* \* Patents would be of little value if infringers of them could not be notified of the consequences of infringement or proceeded against in the courts \* \* \*"  
(p. 37.)

See also *Bement & Sons v. National Harrow Co.*, 186 U. S. 70, 92.

Likewise Univis had the right as well as the legal and moral obligation to agree with its licensees that it would promptly attack all infringers of the licensed patents.

*Walker on Patents*, Deller Edition, page 1546, states:

"An agreement to defend all infringement suits brought against a licensee and to promptly attack all infringers of the licensed patent, was held not to show a common and illegal purpose between the licensor and licensee [*Virtue v. Creamery Pkge. Co.*, 227 U. S. 8, 57 L. Ed. 393 (1913)]; such an agreement is 'but an assurance of title to the rights conveyed.' [*Virtue v. Creamery, supra.*] \* \* \*" (p. 1546.)

The District Court relied upon a letter from the Univis Company to one of its licensees, Johnstone, as evidence of a conspiracy between the appellees and this licensee with regard to the Titmus Company (R. 677). This letter was merely an expression of appreciation on the part of the



Univis Company of the independent and voluntary action of the licensee which was not the result of any coercion, persuasion or urgency of the Univis Company. On the contrary, the record shows that the Univis Company wrote its licensees with regard to the Titmus Company as follows:

**"Your offer of cooperation is indeed appreciated but we want you to know that any steps taken by license distributors to protect their own interest must be entirely voluntary and without any solicitations from us." (R. 258.)**

We submit, therefore, that there is no evidence in the record of any conspiracy or coercion or persuasion between the defendants and any of their licensees to interfere with the Titmus Company, but the record shows that whatever action was taken by the licensees was their own voluntary and unsolicited action, and that as to this isolated instance, whatever the defendants did is fully justified under the law.

#### **VII. The Fair Trade Agreements Are Valid Under the Miller-Tydings Amendment.**

The appellees adopted Fair Trade Contracts to protect further the good will under the trademark "Univis"—a separate right from their patents.

It is not disputed that the Millers-Tydings Amendment removes any and all taint of illegality as to a restraint of trade or otherwise from any "contracts or agreements prescribing prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand or name of the producer or distributor of such commodity, and which is in free and open competition with commodities of the same general class produced or distributed by others when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law or public policy now or hereafter

in effect in any state, territory or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such sale."

It is not disputed that forty states in the Union have passed laws providing in substance that as to intra-state business in those states a producer or distributor may require any dealer not to resell a trademarked article except at prices fixed by the producer or distributor. As stated by this Court in *Old Dearborn v. Seagrams Distillers*, 299 U. S. 183, 193:

"The primary aim of the law is to protect the property—namely the good will—of the producer, which he still owns. The price restriction is adopted as an appropriate means to that perfectly legitimate end and not as an end in itself."

It is not disputed that the finding of the District Court was correct that the appellees' product is in free open competition with commodities of the same general class produced or distributed by others (R. 677) and it is equally undisputed that the Univis Lens Company produces and distributes the lens blanks, and about one-tenth of one percent of its business consists of the manufacture and sale of the completed lenses from these blanks, and that both the blanks and the completed lenses are sold under the trademark "Univis" which is owned by the Univis Lens Company.

On page 73 of its brief the Government suggests that "Univis" is not a valid trademark. The Miller-Tydings Amendment does not require the trademark to be a valid registrable trademark. Even the name of a producer or a "brand"—which need not be a registrable trademark is sufficient if it identifies the product and the good will that is to be protected.

The District Court relied in support of its position upon the case of *Mallinson Fabrics Corp. v. R. H. Macy & Co.*, 14 N. Y. S. 203. The facts of that case are fun-

damentally different from those of the case at bar. The Mallinson Fabrics Corporation manufactured and sold a particular kind of silk cloth under the trademark "Mallinson's Pure Silk Pussy Willow." It did not make or sell dresses made from this cloth and had no trademark applicable to completed dresses, or any goodwill in the dress business.

All that the Court held was that the Mallinson Corporation had no trademark on the completed dress and that therefore the New York Fair Trade Act was not applicable. In the case at bar the trademark "Univis" was applicable to and covered both the "blank" and the completed lens. The Univis Lens Company is the producer and distributor of the blanks. It also occasionally makes and sells the completed lens. The mere fact that in the majority of instances other licensees complete the blank into the finished lens under the supervision of the Lens Company does not operate to prevent the completed lens from being the product of the Univis Lens Company within the purview of the Miller-Tydings Amendment, for the whole foundation of its goodwill depends upon the subsequent lens manufacture.

The cardinal fact is that the blank as it is progressively worked upon does not change its purpose and ultimate objective from the crude form to the finished lens. It has no other use than to become a lens. There is no resale of the completed article but if a resale is construed to have taken place, the right to control that resale price exists in the protection of the good will.

As to the Univis Lens Company being the producer of the finished lens within the provisions of the Miller-Tydings Amendment, and contrary to the holding of the District Court, we quote the following from Paragraph 9 of the Bill of Complaint of the Government in this action (R. 5):

"The term 'Univis bifocal,' or 'Univis lens,' wherever used in this complaint, refers to a type of bifocal lens incorporating features claimed by certain patents controlled by defendant Univis Corporation, which

bifocals are distributed by defendant Univis Lens Company."

It is settled law that the owner of a trademark does not have to personally manufacture the trademarked article, but may have it manufactured and distributed for him under his control. See *Menendez v. Holt*, 128 U. S. 514, 520; *General Baking Co. v. Commander-Larabee Corporation*, 82 F. (2d) 427, 431 (C. C. P. A.).

We submit that the Univis Lens Company having properly trademarked products made for it under its trademark or partly made by it and then fully finished for it or on its behalf by others, comes fairly and fully within the meaning of the provisions of the Miller-Tydings Amendment as the producer and distributor of the trademarked articles. This justifies and makes valid the Fair Trade Contracts regardless of the patent licenses in the protection of "the property—namely the good will—of the producer."

#### **VIII. The Appellees Were Not Subject to the Jurisdiction of the District Court.**

All of the appellees in this action are non-residents of the Southern District of the State of New York. The Univis Corporation is a Delaware corporation, and the Univis Lens Company an Ohio corporation, and the individual appellees are all residents of Ohio. None of the appellees was found within the Southern District of New York at the time of the service of the summons in this action, such service having been made by delivery of a copy thereof to the appellees by the United States Marshal for the Southern District of Ohio, outside of the jurisdiction of the Southern District of New York.

It is not disputed that Section 4 of the Sherman Anti-trust Law vests the district courts of the United States with jurisdiction to prevent and restrain violations of the Act, but the institution of any such action must be in accordance

with proper venue as provided in the Statutes, which is only in a district whereof the defendant is an inhabitant. See Section 51, *Judicial Code*, 28 U. S. C. A. 112.

Section 5 of the Sherman Antitrust Act provides in substance that other parties may be brought before the Court whether they reside in the district or not, but to make such section applicable, at least one of the defendants must be a resident of the district in which the suit was commenced. See *Standard Oil Co. v. U. S.*, 221 U. S. 1, 46.

The facts are undisputed that none of the appellees is a resident of the Southern District of New York, and it is believed that there is no evidence in the record that any of the appellees was "found" within the Southern District of New York within the contemplation of law. While Section 12 of the Clayton Act Amendment provides that antitrust suits may be brought in any district wherein a defendant "may be found or transacts business," under the well settled rules of law as to what constitutes being "found" in a district, it is submitted that none of these appellees was "found" in the Southern District of New York or does business in that district. See *International Harvester Co. v. Kentucky*, 234 U. S. 579; *Bank of America v. Whitney Bank*, 261 U. S. 171, 173; *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U. S. 333; *Consolidated Textile Corp. v. Gregory, Judge*, 289 U. S. 85; *Peoples Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79; *Green v. Chicago, Burlington & Quincy Ry.*, 205 U. S. 530.

It is therefore submitted that the lower court was in error in failing to sustain the motion of the appellees to vacate and quash the service of the summons. (R. 45.)

## XI. CONCLUSION.

From all of the above it follows that the decree below, insofar as it sustains the Bill of Complaint as to the prescription and fitting licenses of the appellees and the Fair Trade Contracts of the appellees with their licensees and



the isolated Titmus incident, should be reversed, but in all other respects, the decree should be affirmed, and the entire Bill of Complaint here dismissed.

Respectfully submitted,

H. A. TOULMIN, JR.,

ROWAN A. GREER,

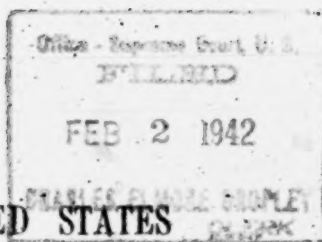
FREDERICK S. DUNCAN,

*Counsel for Appellees and  
Cross-Appellants.*





FILE COPY



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1941**

**No. 856**

**THE UNIVIS LENS COMPANY, INC., ET AL.,**  
*Appellants,*

*vs.*

**THE UNITED STATES OF AMERICA, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.**

**MOTION FOR LEAVE TO FILE STATEMENT AS TO  
JURISDICTION AND STATEMENT AS TO JURIS-  
DICTION.**

✓ **H. A. TOULMIN, JR.,**  
*Counsel for Appellants.*

**JOHN M. MASON,**  
**TOULMIN & TOULMIN,**  
**ROWAN A. GREER,**  
*Of Counsel.*





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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1941**

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**No. 856**

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**THE UNIVIS LENS COMPANY, INC., ET AL.,**

*Appellants,*

*vs.*

**THE UNITED STATES OF AMERICA.**

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**MOTION FOR LEAVE TO FILE JURISDICTIONAL  
STATEMENT.**

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*To the Honorable Supreme Court of the United States:*

Come now The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Meyer H. Stanley, G. F. Stanley and N. M. Stanley, appellants herein, and move the Court to allow the filing herein of a separate type-written statement, hereto attached, disclosing the basis on which it is contended that this Court has jurisdiction on this cross-appeal to review the judgment or decree in question of the District Court for the Southern District of New York, in addition to the statement of jurisdiction heretofore filed in said District Court for the Southern District of New York with the petition for cross-appeal and assignment of errors. In this connection, said appellants represent to the Court that they mistakenly took the view that the application for appeal with the statement

of jurisdiction incorporated therein complied with the Rules of this Court, particularly Rule 12 thereof, but the Clerk of this Court has called to the attention of counsel that said statement of jurisdiction should be filed as a separate document.

Copy of this motion and statement of jurisdiction has been presented to counsel of record for the United States of America, the plaintiff, appellant and cross-appellee, and consent to the filing of this motion is indicated herewith.

Respectfully submitted,

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*Solicitors and of Counsel for*  
*Appellants.*

Copy of above motion and separate statement of jurisdiction therein referred to has been received and it is hereby agreed that such motion may be granted and said statement filed.

CHARLES FAHY,  
*Solicitor General,*  
*Counsel for Plaintiff, Appellee*  
*and Cross-Appellant.*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 856

THE UNIVIS LENS COMPANY, INC., ET AL.,

vs.

Appellants,

THE UNITED STATES OF AMERICA.

**STATEMENT AS TO JURISDICTION.**

*To the Honorable Supreme Court of the United States:*

Come now The Univis Lens Company, Inc., The Univis Corporation, Jack R. Silverman, Meyer H. Stanley, G. F. Stanley and N. M. Stanley, appellants herein, and in compliance with the Rules of this Court and particularly Rule 12 thereof, in addition to the application for cross-appeal heretofore filed in the District Court for the Southern District of New York, reference to which is hereby made, file this statement disclosing the basis upon which it is contended that this Court has jurisdiction upon direct appeal to review the judgment or final decree of said District Court for the Southern District of New York, and for such statement say:

**Statement.**

This is an action in which the United States of America, plaintiff, appellant and cross-appellee, invoked the powers of the District Court for the Southern District of New York, under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 stat. 209, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", said act being commonly known as the Sherman Antitrust Act, against the above named defendants, appellees and cross-appellants in order to prevent alleged violations by them, jointly and severally, of Sections 1 and 3 of said Sherman Antitrust Act.



Upon a trial in said District Court for the Southern District of New York, the said Court entered a decree sustaining in part and dismissing in part the Bill of Complaint of the plaintiff. The opinion of said District Court was filed on September 17, 1941.

The United States of America, plaintiff in said District Court for the Southern District of New York, has filed an appeal direct to this Court from said final decree, and the defendants and appellees have likewise filed a cross-appeal. Both the main appeal of the plaintiff and the cross-appeal of the defendants have been allowed, and bond in the amount of \$250.00 for cost of this cross-appeal fixed, filed and approved in said District Court for the Southern District of New York. Pertinent parts of the record have been prepared both by the plaintiff and appellant and the defendants, appellees and cross-appellants, including praecipes, and presented to the Clerk.

The issues to be decided by this Court are whether there has been any violation of the aforementioned Sections 1 and 3 of the Sherman Antitrust Act and whether the defendants were properly before the Court under the provisions of said Act in accordance with Section 5 thereof.

This Court has jurisdiction of this case and the cross-appeal of the defendants, appellees and cross-appellants under the provisions of Judicial Code section 238 as amended, 28 U. S. C. sec. 345; Act of Feb. 11, 1903, c. 544, sec. 2, 32 stat. 823 as amended, 15 U. S. C. sec. 29; 36 stat. 1467, sec. 291, 15 U. S. C. A. 29; *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436; *Interstate Circuit, Inc. v. United States*, 306 U. S. 208; *Sugar Institute v. United States*, 297 U. S. 553; *Atlantic Cleaners & Dyers v. United States*, 286 U. S. 427.

The Act of Feb. 11, 1903, c. 544, sec. 2, 32 stat. 823 specifically provides as follows:

"In every suit in equity brought in any district court of the United States under sections 1-7 or 15 of this title,

wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

It is shown that the cross-appeal in this action has been taken within the sixty day period as provided in law and counsel of record for the plaintiff, appellant and cross-appellee has been served with copies of the petition for cross-appeal, order allowing the same, assignment of errors and prayer for reversal in part, and this statement of jurisdiction in the above entitled cause.

It is our understanding that if this Court considers there is merit in the cross-appeal, we will be permitted to file complete brief upon the questions involved. It is not our intention, by attempting here to point out here the issues involved herein, to waive the errors assigned in connection with said cross-appeal.

Respectfully submitted,

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*Defendants, Appellees and*  
*Cross-Appellants.*



# SUPREME COURT OF THE UNITED STATES.

Nos. 855, 856.—OCTOBER TERM, 1941.

The United States of America,  
Appellant,

- 855

vs.

The Univis Lens Company, Inc., The  
Univis Corporation, Jack R. Silver-  
man, Myer H. Stanley, G. F. Stan-  
ley, N. M. Stanley.

Appeals from the District  
Court of the United  
States for the Southern  
District of New York.

The Univis Lens Company, Inc., The  
Univis Corporation, Jack R. Silver-  
man, Myer H. Stanley, G. F. Stan-  
ley, N. M. Stanley, Appellants,

856

vs.

The United States of America.

[May 11, 1942.]

Mr. Chief Justice STONE delivered the opinion of the Court.

These cases come here on direct appeal and cross appeal from a judgment of the district court granting in part and denying in part the Government's prayer for an injunction restraining violations of §§ 1 and 3 of the Sherman Act, 15 U. S. C. §§ 1, 3, which make unlawful any contract, combination or conspiracy in restraint of trade or commerce among the states. The principal questions for decision are:

*First:* Whether the system established and maintained by the Univis Corporation, appellee and cross appellant, for licensing the manufacture and sale of patented multifocal eyeglass lenses is excluded by the patent monopoly from the operation of the Sherman Act.

*Second:* Whether if not so excluded the resale price provisions of the licensing system are within the prohibition of the Sherman Act and not exempted from it by the provisions of the Miller-Tydings Act amendment of § 1 of the Sherman Act, 50 Stat. 693.

Appellee, Univis Lens Company, was the owner of a number of patents and two trademarks relating to multifocal lenses. In

1931 it organized appellee, Univis Corporation. The Lens Company then acquired and now holds a majority of the stock of the corporation. The individual appellees are the principal stockholders of the Lens Company. "They are stockholders in the Corporation and are the principal officers of both corporations, which may for the purposes of this suit be treated as though they were a single corporation. Upon the organization of the Corporation, the Lens Company transferred to it all its interest in the patents and trademarks presently involved, and the Corporation then proceeded to set up and has since maintained the licensing system which the Government now assails.

The relevant features of the system are as follows: The Corporation licenses the Lens Company to manufacture lens blanks and to sell them to designated licensees of the Corporation, upon the Lens Company's payment to the Corporation of an agreed royalty of 50 cents a pair. The lens blanks are rough opaque pieces of glass of suitable size, design and composition for use, when ground and polished, as multifocal lenses in eyeglasses. Each blank is composed of two or more pieces of glass of different refractive power, of such size, shape, and composition and so disposed that when fused together in the blank it is said to conform to the specifications and claims of some one of the Corporation's patents.

The Corporation also issues three classes of licenses—licenses to wholesalers, to finishing retailers and to prescription retailers. The licenses to wholesalers authorize the licensees to purchase the blanks from the Lens Company, to finish them by grinding and polishing, and to sell them to prescription licensees only at prices fixed by the Corporation licensor. In finishing the lenses so as to make them an effective aid to vision of the prospective wearer, to whom the prescription retailer sells, it is necessary for the wholesaler, by grinding the blanks, to conform their curvatures to the prescription supplied by the retailer with his order. By the terms of the license the wholesalers are required to keep full accounts of all sales, showing the sales prices of lenses and the names of the purchasers, and to make them available to representatives of the Corporation.

The licenses to finishing retailers—who purchase the blanks from the Lens Company, grind and polish them and adjust the lenses, in frames or supports, to the eyes of the consumers—contain similar provisions. The retailers are licensed to purchase the



blanks of the Lens Company and to sell them to their customers at prices prescribed by the Corporation licensor.

Both the licenses to wholesalers and to finishing retailers require the licensee to notify the Corporation "of any violation on the part of any jobbers or other licensees of the agreements respectively made by them with the Corporation, and to assist the Corporation in all possible ways in securing evidence against, and enforcing its agreements with such jobbers and licensees".

The licenses to prescription retailers, who are without facilities for grinding and finishing the lenses, but who prescribe and adjust glasses for their customers, are signed both by the Corporation and a licensor wholesaler, and grant to the retailer a "franchise to prescribe and fit Univis lenses", in return for which the prescription retailer agrees to sell finished lenses only to consumers and only at prices prescribed by the Corporation.

All the licenses to wholesalers and retailers recite the Corporation's ownership of the lens patents and purport to confer on the licensee the privilege of selling the patented invention in the manner and to the extent stated. No royalties are exacted of any of the licensees other than the 50 cents collected by the Corporation for each pair of blanks sold by the Lens Company. The rewards of the corporate appellees for the exploitation of the patents and the patented lenses are derived wholly from the sales by the Lens Company of the blanks, from the proceeds of which the 50-cent royalty is paid.

The prices prescribed and maintained under the licensing system are: \$3.25 a pair for the blanks sold by the Lens Company to wholesalers, and \$4 a pair for those sold to finishing retailers; \$7 a pair for finished lenses sold by wholesalers; \$16 a pair for white, and \$20 for tinted, lenses sold to consumers by prescription and finishing retailers.

The Corporation pursues the policy of issuing licenses to "qualified licensees" who, it is said, are required to maintain "high standards of practice" and to be skilled in the performance of the services which they undertake to render. According to the Corporation's instructions to its field representatives, "price cutters" are not eligible as prescription retailer licensees. Inquiry is made to ascertain whether prospective licensees advertise prices, and whether they are considered in their communities to be price cutters. The Corporation cancels licenses principally because of the failure of licensees to adhere to the price fixing provisions

but also because they advertise prices or the acceptance of installment payments, or for other forms of advertising objectionable to it; for selling Univis lenses to customers other than those designated by the Corporation; for not giving a certain percentage of the licensees' multifocal lens business to Univis; because the licensee is located in a drug, department or jewelry store, or because the licensee engaged in price cutting in the sale of the products of other manufacturers.

For a time the Corporation licensed approximately 20 per cent of the retailers in a locality. It now licenses a larger percentage but not more than 50 per cent. There are approximately 330 wholesaler licensees, 325 finishing retailer licensees and 6,500 prescription retailer licensees located in various states of the Union including New York and the District of Columbia. The Corporation, by its representatives, solicits licenses and negotiates with licensees in the towns and cities where they conduct their business, including the Southern District of New York. The Lens Company, whose annual sales volume is approximately \$1,000,000, ships blanks in interstate commerce from its factory in Ohio to wholesalers and finishing licensees in the various places where they are located, including the Southern District, where its representatives visit licensees for the purpose of instructing them in finishing lens blanks and for promoting sales of Univis lenses. The facts amply established the venue of the court below. *Eastman Co. v. Southern Photo Co.*, 273 U. S. 359, 373.

Of the sixteen patents owned by the Corporation three are unrelated to the issues of the present case; five are for methods of producing lenses utilized by the Lens Company in manufacturing blanks and do not concern any method or process employed by the licensees who finish the lens blanks. Each of the remaining eight patents relates to the shape, size, composition and disposition of the pieces of glass of different refractive power in the blanks into which they are fused.

The district court found, 41 F. Supp. 258, that the claims of each of these eight patents are for a finished lens and that consequently the wholesalers and finishing retailers, in grinding and polishing each lens, practice in part the patent, in conformity to which the Lens Company has manufactured the blanks which it supplies. The court thought that without the granted license the final step in finishing the lens would infringe the patent and concluded that for

this reason the Corporation could condition its licenses upon the maintenance by the licensee of the prescribed retail price. See *United States v. General Electric Co.*, 272 U. S. 476. But it held that the prescription retailer licenses are unlawful because their restrictions upon the resale of the finished product are not within the patent monopoly and are proscribed by the Sherman Act.

It also held that certain "fair trade agreements" entered into by the Lens Company with the licensees for the control of resale prices of the finished lenses, were not within the exception to the Sherman Act created by the Miller-Tydings Act. This was because the Lens Company had undertaken to fix the resale price of the finished lenses, which are a different product from the lens blanks which it manufactures and sells. The court accordingly limited the relief which it granted to an injunction restraining respondents from carrying out or enforcing the restrictive provisions of the prescription retailer licenses and the fair trade agreements, and from using its licensing system—as has been done in one instance—as the means of preventing a particular competitor from manufacturing and distributing multifocal lens blanks similar in appearance to those produced by the Lens Company.

The Government has not put in issue the validity of the lens patents, but argues that their scope does not extend beyond the structure of the lens blanks and consequently affords no basis for the Corporation's restrictions on the sale of the finished lenses which the wholesalers and finishing retailers fashion from blanks purchased from the Lens Company. It insists that the novel features of the invention do not include more than the combination of shape, size and arrangement of the described pieces of glass when they are fused into the blank; that the grinding and polishing of the blank involve no practice and add no feature not common to the finishing and "fitting" of other types of multifocal lenses which are not covered by the patents; and that their scope cannot be lawfully extended to a procedure not in itself novel merely because it is applied to an article which embodies the only novel features of the alleged invention, and has by the sale become a lawful subject of commerce.

The record gives no account of the prior art and does not provide us with other material to which, if available, resort might appropriately be had in determining the nature of an alleged invention and the validity and scope of the patent claims founded

upon it. In any event we find it unnecessary, in the circumstances of this case, to decide whether, as the court below held, the patent claims can rightly be said to include the finishing of the blanks.

As appellees concede, the invention of only a single lens patent is utilized in making each blank and finishing it as a lens. We therefore put to one side questions which might arise if the finisher of a particular lens blank utilized the invention of some patent other than the patent which was practiced in part by the manufacture of the blank. And we assume for present purposes, without deciding, that the patent is not fully practiced until the finishing licensee has ground and polished the blank so that it will serve its purpose as a lens. But merely because the licensee takes the final step in the manufacture of the patented product, by doing work on the blank which he has purchased from the patentee's licensee, it does not follow that the patentee can control the price at which the finished lens is sold.

Notwithstanding the assumption which we have made as to the scope of the patent, each blank, as appellees insist, embodies essential features of the patented device and is without utility until it is ground and polished as the finished lens of the patent. We may assume also, as appellees contend, that sale of the blanks by an unlicensed manufacturer to an unlicensed finisher for their completion would constitute contributory infringement by the seller. *Leeds & Coffin v. Victor Talking Machine Co.*, 213 U. S. 325, 332-33; cf. *Carbice Corp. v. American Patents Corp.*, 283 U. S. 27, 34.

But in any case it is plain that where the sale of the blank is by the patentee or his licensee—here the Lens Company—to a finisher, the only use to which it could be put and the only object of the sale is to enable the latter to grind and polish it for use as a lens by the prospective wearer. An incident to the purchase of any article, whether patented or unpatented, is the right to use and sell it, and upon familiar principles the authorized sale of an article which is capable of use only in practicing the patent, is a relinquishment of the patent monopoly with respect to the article sold. *Leitch Mfg. Co. v. Barber Co.*, 302 U. S. 458, 460-61; *B. B. Chemical Co. v. Ellis*, 314 U. S. 495. Sale of a lens blank by the patentee or by his licensee is thus in itself both a complete transfer of ownership of the blank, which is within the protection of the patent law, and a license to practice the final stage of the

patent procedure. In the present case the entire consideration and compensation for both is the purchase price paid by the finishing licensee to the Lens Company. We have no question here of what other stipulations, for royalties or otherwise, might have been exacted as a part of the entire transaction, which do not seek to control the disposition of the patented article after the sale. The question is whether the patentee or his licensee, no longer aided by the patent, may lawfully exercise such control.

The declared purpose of the patent law is to promote the progress of science and the useful arts by granting to the inventor a limited monopoly, the exercise of which will enable him to secure the financial rewards for his invention. Constitution of the United States, Art. I, § 8, Cl. 8; 35 U. S. C. §§ 31, 40. The full extent of the monopoly is the patentee's "exclusive right to make, use, and vend the invention or discovery". The patentee may surrender his monopoly in whole by the sale of his patent or in part by the sale of an article embodying the invention. His monopoly remains so long as he retains the ownership of the patented article. But sale of it exhausts the monopoly in that article and the patentee may not thereafter, by virtue of his patent, control the use or disposition of the article. *Bloomer v. McQuewan*, 14 How. 539, 549-50; *Adams v. Burke*, 17 Wall. 453; *Hobbie v. Jennison*, 149 U. S. 355. Hence the patentee cannot control the resale price of patented articles which he has sold, either by resort to an infringement suit, or, consistently with the Sherman Act (unless the Miller-Tydings Act applies), by stipulating for price maintenance by his vendees. *Bauer v. O'Donnell*, 229 U. S. 1; *Boston Store v. American Graphophone Co.*, 246 U. S. 8; *Straus v. Victor Talking Machine Co.*, 243 U. S. 490; *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, 456-57, and cases cited.

We think that all the considerations which support these results lead to the conclusion that where one has sold an uncompleted article which, because it embodies essential features of his patented invention, is within the protection of his patent, and has destined the article to be finished by the purchaser in conformity to the patent, he has sold his invention so far as it is or may be embodied in that particular article. The reward he has demanded and received is for the article and the invention which it embodies and which his vendee is to practice upon it. He has thus parted



with his right to assert the patent monopoly with respect to it and is no longer free to control the price at which it may be sold either in its unfinished or finished form. No one would doubt that if the patentee's licensee had sold the blanks to a wholesaler or finishing retailer, without more, the purchaser would not infringe by grinding and selling them. The added stipulation by the patentee fixing resale prices derives no support from the patent and must stand on the same footing under the Sherman Act as like stipulations with respect to unpatented commodities. *Ethyl Gasoline Corp. v. United States, supra.*

Our decisions have uniformly recognized that the purpose of the patent law is fulfilled with respect to any particular article when the patentee has received his reward for the use of his invention by the sale of the article, and that once that purpose is realized the patent law affords no basis for restraining the use and enjoyment of the thing sold. *Adams v. Burke, supra*, 456; *Keeler v. Standard Folding Bed Co.*, 157 U. S. 659; *Motion Picture Co. v. Universal Film Co.*, 243 U. S. 502; and see cases collected in *General Pictures Co. v. Electric Co.*, 305 U. S. 124, 128, n. 1. In construing and applying the patent law so as to give effect to the public policy which limits the granted monopoly strictly to the terms of the statutory grant, *Morton Salt Co. v. Suppiger Co.*, 314 U. S. 488, the particular form or method by which the monopoly is sought to be extended is immaterial. The first vending of any article manufactured under a patent puts the article beyond the reach of the monopoly which that patent confers. Whether the licensee sells the patented article in its completed form or sells it before completion for the purpose of enabling the buyer to finish and sell it, he has equally parted with the article, and made it the vehicle for transferring to the buyer ownership of the invention with respect to that article. To that extent he has parted with his patent monopoly in either case, and has received in the purchase price every benefit of that monopoly which the patent law secures to him. If he were permitted to control the price at which it could be sold by others he would extend his monopoly quite as much in the one case as in the other, and he would extend it beyond the fair meaning of the patent statutes and the construction which has hitherto been given to them.

There is thus no occasion for our reconsideration, as the Government asks, of *United States v. General Electric Co., supra*, on

which appellees rely. The Court in that case was at pains to point out that a patentee who manufactures the product protected by the patent and fails to retain his ownership in it can not control the price at which it is sold by his distributors (272 U. S. at 489). Accordingly neither the Lens Company nor the Corporation, by virtue of the patents, could after the sale of the lens blank exercise any further control over the article sold.

The price fixing features of appellees' licensing system, which are not within the protection of the patent law, violate the Sherman Act save only as the fair trade agreements may bring them within the Miller-Tydings Act. Agreements for price maintenance of articles moving in interstate commerce are, without more, unreasonable restraints within the meaning of the Sherman Act because they eliminate competition, *United States v. Trenton Pottery*, 273 U. S. 392; *United States v. Socony Vacuum*, 310 U. S. 150, and restrictions imposed by the seller upon resale prices of articles moving in interstate commerce were, until the enactment of the Miller-Tydings Act, 50 Stat. 693, consistently held to be violations of the Sherman Act. *Ethyl Gasoline Co. v. United States*, *supra*, 457, and cases cited.

The Miller-Tydings Act provides that nothing in the Sherman Act "shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others . . . " whenever such agreements are lawful where the resale is made.

The contracts entered into by the Lens Company with the licensees of the Corporation stipulate for the maintenance of the prices which are prescribed by the licensing system. Appellees assert and we assume for present purposes that the blanks which the Lens Company sells and the finished lenses are marked by appellees' trademark as required by the statute. In the contracts the Lens Company is designated as the manufacturer of "eye glass lenses" which are distributed and sold under the trademark of the manufacturer. But the Lens Company manufactures the blanks and not the finished lenses to which the resale prices apply. It is therefore not the manufacturer of the "commodity" which the licensees sell, and the licensees are not engaged in the "resale" of the same commodity they buy. We find nothing

in the language of the Miller-Tydings Act, or in its legislative history, to indicate that its provisions were to be so applied to products manufactured in successive stages by different processors that the first would be free to control the price of his successors. The prescribed prices are thus not within the Miller-Tydings exception to the Sherman Act.

Appellees stress the features of their licensing system by which it is said they protect the public interest and their own good will by the selection as licensees of those who are specially skilled and competent to render the service which they undertake. But if we assume that such restrictions might otherwise be valid, cf. *Fashion Guild v. Trade Commission*, 312 U. S. 457, 467, these features are so interwoven with and identified with the price restrictions which are the core of the licensing system that the case is an appropriate one for the suppression of the entire licensing scheme even though some of its features, independently established, might have been used for lawful purposes. *Ethyl Gasoline Corp. v. United States*, *supra*, 461. The injunction of the district court will therefore be continued, and extended so as to suppress all the license contracts and the maintenance of the licensing system which appellees have established, other than the Corporation's license to the Lens Company. The judgment in No. 856 is affirmed. The judgment in No. 855 is reversed, and both cases are remanded to the district court for the entry of an appropriate decree in conformity to this opinion.

*So ordered.*

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

A true copy.

Test:

Clerk, Supreme Court, U. S.

